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SPEECHES

OF THE

MANAGERS AND COUNSEL

IN THE

TRIAL OF WARREN HASTINGS.

EDITED BY

E. A. BOND,

ASSISTANT KEEPER OF THE MANUSCRIPTS IN THE BRITISH MUSEUM.

VOL. III.

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CONTINUATION OF SUMMARY

OF

PROCEEDINGS ON THE TRIAL.

In the present volume are printed the remainder of the Speeches of Mr. Hastings' Counsel, in answer to the several Charges maintained against him by the Managers for the House of Commons: and we resume our Summary of Proceedings at the point of the production of evidence in Defence on the first Article of the impeachment.

On the 1st of May, 1792, the eighty-first day of the trial, Mr. Law proceeded to adduce written evidence to show that Cheyt Sing had no claim to the favour of the Company from the conduct of his father, Bulwant Sing; and to prove, from the circumstances of his investiture with the Rajaship of Benares, that the sovereignty over his territory had been reserved to the Company. He then called Viscount Stormont, to prove that, when he was Ambassador at the Court of France, in the year 1777, he had sent to Mr. Hastings privately such information of the designs of the French Government against the British power in India, as fully justified him in the measures he at that time took for putting the Company's provinces in a state of defence. The proceedings of the day terminated with the production of written evidence on the subject of the demands made on

1792.

Evidence in Defence on the first Charge.

Examination of Viscount Stormont.

1792. Cheyt Sing for contributions in money and troops in aid of the Company.

Exactions on Cheyt Sing.

On the 3rd of May, the case for the Defence was conducted by Mr. Plumer, who gave in further papers on the subject of the exactions made on Cheyt Sing; and, afterwards, produced evidence to show by precedents the legality of the delegation of their power by the Council of Bengal to Mr. Hastings. Resistance was made by Mr. Burke to the admission of much of the evidence, on the grounds of its being inapplicable, and that the precedents cited were not parallel to the case; but he declined to make an argument of his objections, and the Court allowed the papers to be read.

Delegation of power.

Objection to evidence.

Distress of Major Camac's detachment.

The succeeding subject of the Counsel's evidence was the distress of Major Camac's detachment, occasioned by Cheyt Sing's unpunctuality in his payments. Mr. Plumer produced a letter of Major Camac, with an enclosure of extracts from two letters referred to in it. Exception was immediately taken by the Managers to the extracts, on the ground of absence of proof of their being the identical papers mentioned in the letter. After some altercation, it was ruled by the Lord Chancellor—Earl Stanhope supporting him—that it was a case of probable evidence, and that "where the body of the letter so refers to the enclosure, and the enclosure so far corresponds, as to raise a probability [of its identity], the Court will read this letter, subject to have that probability refuted by any evidence that may be given on the other side." Mr. Burke protested against this decision, as contrary to a previous ruling of his Lordship, but was stopped by Earl Stanhope reminding him that he was arguing a point not now before the Court.

Objection to enclosures in letters.

The Company distressed by Cheyt Sing's contumacy.

After the close of the discussion, Mr. Plumer and Mr. Law brought forward documentary evidence to prove "the distress sustained by the Company at the period when Cheyt

Sing was withholding his assistance." The question recurred of the admissibility of an enclosure in a letter, without proof of its identity; but Mr. Burke waived further objection, under a protest conveyed in these words: "The same objection lies to this that lies to the other; but, your Lordships having decided that, we have made it a rule with ourselves to give as little delay as possible; therefore we make no objection, leaving it to your Lordships to judge how far, on future trials, a great deal of evidence produced this day may be considered as precedents."* 1792.

Mr. Burke's protest against evidence.

On the 9th of May, various letters were produced by the Counsel to prove the necessities of the Company, occasioning the exactions from Cheyt Sing. And these were followed by evidence of the communication of the demands made on Cheyt Sing to the court of Directors and to the Secretary of State. Mr. Dallas then opened a new head of evidence, viz., that Cheyt Sing failed in observing one of the conditions upon which he held his zamindary, by neglecting to maintain a regular police. Occasional objections were raised by Mr. Burke; the principal of them being against the admission as evidence in favour of Mr. Hastings of the affidavits sworn before Sir Elijah Impey, and which the Managers themselves had put in evidence against him. Mr. Burke's argument was, that "the Managers produced these affidavits against Mr. Hastings, not as being found upon the Company's records, but as being transmitted, authenticated by himself, and sent here as papers in his own justification;"—but that, when brought forward for the purpose of defending him by criminating a third person, they became inadmissible. On the Lord Chancellor's overruling the objection, Mr. Burke, although supported by Earl Fitzwilliam,

Evidence of necessitous state of the Company.

Neglect of police in Benares.

Objections to admission of the affidavits sworn before Sir E. Impey.

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* Gurney's Report, MS., p. 58.

1792. declined the Chancellor's offer to refer the point to the decision of the House.

Precedents for treatment of Cheyt Sing.

On the 10th of May, the earlier part of the sitting was occupied in reading evidence on the part of the Defence, to establish precedents for the treatment of Cheyt Sing on his failing in the payment of the sums exacted from him; to prove acts of rebellion on his part against the Company; and to justify the measures taken by Mr. Hastings for the government of the province of Benares after Cheyt Sing's expulsion. The documents were handed in by Mr. Dallas. Major Osborne was then examined by Mr. Law on the subject of the disaffection of Cheyt Sing, and the general success and popularity of Mr. Hastings' administration. Objection was made by Mr. Burke to much of the witness's evidence, as grounded on mere hearsay reports; and in some instances he was supported by the Court. He then entered upon a cross-examination of Major Osborne, which occupied the remainder of the sitting. An interruption occurred during an attempt to elicit that the Nawab had been induced, by complaints against the witness, to decline his services. Lord Stanhope objected to the inquiry as irrelevant, and was angrily replied to by Mr. Burke, who, in the course of his observations, said, "I come here well knowing the subject matter and well knowing what it is fit for me to ask upon it; and therefore those persons who do not know the subject matter, or pretend to know my duty better than I do, are upon no account to control me in the exercise of it."* After observations by Mr. Law and Mr. Wyndham, one of the Managers, the Lord Chancellor directed the witness to answer the question put by Mr. Burke.

Examination of Major Osborne.

Interruption by Earl Stanhope.

The cross-examination of Major Osborne was continued on the following court-day, the 15th of May. After its

* Gurney's Report of the Proceedings, MS., p. 116.

conclusion, Mr. Markham, who had been Assistant Resident at Benares in the year 1778, and subsequently Resident, was called by the Defendant's Counsel and examined for the remainder of the day, and on the following court-day, the 16th of May, on the whole subject of transactions connected with Cheyt Sing. His evidence was considered of much value on behalf of Mr. Hastings. 1792. Examination of Mr. Markham.

The three ensuing court-days, the 22nd, 23rd and 30th, of May, were devoted to the cross-examination of Mr. Markham, conducted by Mr. Anstruther and Mr. Burke. At the opening of proceedings on the last day, Mr. Markham stated to the Court that, a few minutes before, he had received a note from Mr. Burke enclosing a letter written by Mr. Markham to his father, the Archbishop of York, from Benares, in January, 1782, immediately after the disturbance there; and that Mr. Burke, in his note, had desired him to correct his evidence in some instances, where, he said, it had been rather inaccurate. He desired that the whole of the letter might be read in Court. Mr. Markham's letter to his father.

Mr. Burke explained that he had accidentally found the letter three days before, and had sent it to Mr. Markham under the idea that it would help his recollection of the events he was giving evidence concerning. His note to Mr. Markham accounted for the letter being in his possession, by stating that it had been given to him, as a member of the Select Committee on India, by the Archbishop, immediately after his receiving it; and it went on to say, "I send it as I received it, and I keep no copy. I have marked some parts with a pencil. As the transaction was so many years ago, and your memory may easily not have served you perfectly, perhaps you might wish to render some parts of your evidence more exact. It is for that reason I now send it to you, wishing you to make such use of it as you think proper; but this I leave wholly to your own discretion. The letter

1792. is in your sole possession. Perhaps you may think the matters marked of no moment. I shall make no use of it; and it is, I think, more proper that you should have it than I." The letter, which gave a general account of Mr. Hastings' proceedings with Cheyt Sing, was read in Court. In the "History of the Trial," it is stated that the letter, "in every point of any importance, agreed exactly with the evidence that Mr. Markham had given." The History further throws out an insinuation of disingenuousness on the part of Mr. Burke, asserting that he had "cross-examined Mr. Markham for two days, just as a man would have done who had studied the letter to the Archbishop, which letter Mr. Burke had never seen, as he assured the Court, from July, 1782, until he found it, in May, 1792, by accident."*

Difficulty in forming the Court.

On the day appointed for the resumption of the proceedings, there was a difficulty in making a House. Mr. Burke, unwearied in his prosecution of the great cause he had undertaken the direction of, and ever intent on attaining his object of a conviction, was the only one of the Managers present at the proper hour for assembling; and it was only by the particular and earnest application of Mr. Hastings himself to individual gentlemen that the Court was formed. It was now, indeed, apparent to him that his hope of seeing the termination of his trial in the present session of Parliament could not possibly be realised. The ardour with which the proceedings had been taken up at their commencement by the body of the Managers for the House of Commons, and

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* In reference to this incident Mr. Adolphus remarks, that "the effect of the transaction was to dissolve entirely, or rather to convert into hostility, the sentiments of friendship which for so many years had subsisted between two men so worthy of each other's esteem as the archbishop and the senator." He adds, in a note, "I have been informed, by a learned and most intimate friend of Mr. Burke, that a correspondence respecting the authorship of Junius's Letters contributed to, if it did not produce, this alienation; but I am not informed of the date of such correspondence. An open declaration of dislike had not taken place till this period."—History of England; Vol. VI., p. 184.

1792.

General indifference to the proceedings.

the interest in them exhibited by the general public, were in great measure extinct. The historian of the trial, in reference to the increasing slowness of its progress, points out, that whereas, "in the first year, 1788, the Managers, twenty in number, attended in a body; a House was always formed by twelve o'clock, generally earlier; and the Court sat from that time until five, and sometimes later, and sat thirty-five days in that year; at present, in the year 1792, it is with the utmost difficulty a House can be made before two; and, though we are now in the last day of May, the Court has only sat in this year sixteen days, but, in fact, not a third the number of hours that it sat in the first year. Two, three, or four, dressed Managers are all that attend—very few of the Commons—and, of the Lords, originally one hundred and eighty-six, there are not now more than from thirty to forty." *

Petition of Mr. Hastings to the Crown.

Mr. Hastings had already, on previous occasions, urged the Court to more continuous sittings, to greater expedition in its proceedings, and to the retrenchment of whatever could be considered superfluous in them. He now took the course of a direct appeal to the Crown, petitioning that Parliament might not be prorogued until his trial was finished. Probably a hope of stimulating still further in his favour the growing sympathy of the public mingled with more apparent motives for urging such a request; for he could have had no expectation of its being acceded to. The petition to the King was presented on the 30th of May; and, at the close of proceedings on the following court-day, the 6th of June—during which Lieut. Birrell, Col. Blair, Mr. Charles Græme and Capt. Wade, were examined by the Counsel, in order to elicit evidence that Cheyt Sing had deliberately planned his

* "History of the Trial;" Part v., p. 26.

1792. insurrection against the Company—Mr. Hastings read the following written address to the Court:—

Mr. Hasting's address to the Court, 6th June 1792.

"Before your Lordships retire to your chamber, I request that you will have the goodness to permit me to make a short representation. It will not take up five minutes of your time.

"My Lords, what I have to offer is, in my conception of it, of so much consequence, that I would not venture to trust it to my own recollection: what I have to say I have, therefore, taken down in notes. Will your Lordships have the goodness to permit me to read it?

"I have already, my Lords, upon former occasions, ventured to state to your Lordships the hardships which I sustained by the unexampled length of this trial, even in the more early periods of it. I mean not now to repeat them; nor will it be necessary to show to your Lordships how much they must be all aggravated by their subsequent extension. I merely allude to them for the purpose, and for that only, of bespeaking your pardon for the liberty I now take in praying your Lordships to allow me as much time as you can afford during this session to hear the remainder of my Defence.

"I should not so anxiously press this upon your Lordships, were I not assured that your Lordships have no longer any call for your attention to matters of greater consequence;—if any matter can exceed in its importance the course of a criminal trial protracted to so many years as mine has been.

"For my Defence to the Article now in evidence before your Lordships, my Counsel will desire only to call two or perhaps three more witnesses—certainly no more—selected from the survivors of a much larger number, whom we forbear to call from respect to your Lordships' time, and from a consideration of the uncertainty of my life or of theirs enduring to the end of a more complete refutation of the charge which the Commons have preferred against me. The examination in chief of those witnesses—for I cannot limit the time of the cross-examination, or answer for that which may be lost by interruptions—will not take up the compass of two, or at the most three, hours.

"Two more Articles will then remain. On one only will it be necessary to call any parol evidence; and for that only three witnesses—one a gentleman of very infirm health, who was settled with his family in the south of France, but came to England in the first year of this long trial, and has remained here till this time, in yearly expectation of giving his evidence at your Lordships' bar. Among the gentlemen whom I claim to be allowed to produce in evidence to the Article now under examination, there is one who, having given his attendance through a considerable part of the first year, when it became evident that he could not be called till the next, informed me that his means of subsistence, though not his patience, was exhausted, and requested me to dispense

with his evidence, that he might return to his service in India. I, without hesitation, cheerfully consented. That gentleman accordingly went to India; served with credit two campaigns under Lord Cornwallis; is again returned to England, and again in attendance to give his evidence in my Defence. Your Lordships will not be surprised if I should feel a more than common anxiety not to lose a witness whom I have recovered in so singular a manner from so many obstacles which threatened to deprive me of the benefit of his testimony, nor to lose so impressive a memorial of the extraordinary character of this impeachment. 1792. — Mr Hasting's address, 6th June 1792.

"It is hard, with so near a prospect of a close, to see it vanish into darkness, and another year, or perhaps other years, if I should live to see them, destined for the continuation of this trial.

"Let me beseech your Lordships to recollect that more than five years are already past since I first appeared at your Lordships' bar: and I am sure that, if any one of the noble Lords who were then living and saw me there had been told—if human wisdom, which is the result of human experience, could have suggested such a conclusion—that more than five years would have passed before I could have obtained a judgment, he would have pronounced it against the course of nature to expect it, and have resented the supposition as an unmerited reflection on the justice and dignity of this great kingdom.

"In the first year, which was the year 1788, the Court which your Lordships now compose sat 35 days; generally assembling at 12 o'clock, sometimes earlier, and sitting till five, and occasionally later. This year your Lordships have sat, within a week of the same period of time, only 16 days, and have seldom been able to open the Court much earlier than 2 o'clock. I should be as ungrateful as unreasonable were I to insinuate that these delays were imputable in the least to your Lordships; neither is it my design to impute blame to any; it is the effect, not the cause, that I lament. Yet, my Lords, if I might be allowed to expostulate with those whose zeal, animating them to exertions and to a perseverance of which, even in that body, there are few examples, brought me to the situation in which I now stand, I might plead, and surely without offence, that the rights and interests of the people of this kingdom, and the honour of its Crown—which were the great inducements stated by the Commons of Great Britain for calling together its highest court of judicature, to sit in trial upon me—are at least as much concerned in their using the same exertions to promote the course of that trial, and to bring it to an issue.

"My respect forbids me to say more upon the subject; nor should I have said so much, but to make it evident to your Lordships that, whatever causes of delay have occurred, or may in future occur, in the course of this trial—if it can be supposed that I would willingly be instrumental to my own wrong—neither have been nor shall be in any wise imputable to me. In proof of this, I may allude to, but I will not specify, the

1792.

Mr. Hasting's address, 6th June 1792.

many constitutional and even personal means to which I have had recourse to accelerate the progress of the trial and remove every obstruction to it.

"That I might not again urge a request to your Lordships which it might not be in your Lordships' power to grant, I have profited by the error which, I have been told, I committed in the petition which I last year addressed to your Lordships, and have addressed an humble petition to His Majesty, praying that he would be graciously pleased to permit your Lordships to continue to sit till the close of the trial. I rely with perfect confidence on His Majesty's gracious disposition to grant my prayer; and, in that case, I do assure your Lordships that every possible means shall be used by me, and by the gentlemen whom you have given me for my Counsel, to bring my Defence to a speedy conclusion.

"If, which I reluctantly suppose, it shall be deemed unreasonable, or, for causes which cannot fall within the scope of my limited comprehension, improper, I do most humbly and most earnestly entreat your Lordships, in that case, that you will afford me as many days as may be necessary to bring the present Article to a close, and to allow my Counsel to sum up the evidence on this Article, while it is recent in your Lordships' recollection."*

The request conveyed in the concluding passage of this address was considerately regarded by their Lordships, and exertions were made to advance the proceedings by more frequent sittings during the short residue of the session.

Close of evidence in Defence on the first Charge.

On the 7th of June, the evidence for the Defendant on the first Charge was closed, by the examination of Lieut. Grey, an officer originally in the Company's and afterwards in the King's service; Col. Popham, who was employed in principal command against Cheyt Sing; and Capt. Simes, an officer in the King's service, who had acted against Cheyt Sing, and who had also been employed in India since the commencement of the trial. The latter witness testified to the high estimation in which Mr. Hastings was still held by all classes in India, and to the attachment of the people to him. The cross-examinations were conducted by Mr. Burke, with some few interruptions from the Counsel for

* Gurney's Report, MS.: and "History of the Trial;" Part v., p. 27.

Mr. Hastings, Lord Stanhope taking part in the discussions arising from them. 1792.

On the 9th of June, the ninety-second day of the trial, Mr. Dallas commenced his summing up of the evidence for the Defence on the first Article of the Charge, continuing it on the 11th, and concluding it on the 12th of the same month. His speech throughout was characterised by remarkable clearness in the argument, and by fluency of delivery. On its conclusion, the Court adjourned to the second Tuesday in the next session.

Mr. Dallas' summing up of the evidence.

Adjournment.

The Parliament assembled on Thursday the 13th of December in the same year, but the trial was not resumed till the 15th of February, 1793; although, on the 11th of the month, on the motion of Major Maitland, a committee had been appointed by the House of Commons to consider of the best means for expediting the proceedings. During the recess, Lord Thurlow, who had personally a high regard for Mr. Hastings, had resigned the Seals, and was succeeded by Lord Loughborough, who presided at the opening of the Court. The effect of the duration of the proceedings, now entering the sixth year, is strikingly pointed out by an observation of the historian of the trial. He says,—"It was impossible to view the Court without strong sentiments of regret for the havoc which time had made amongst the members of it since the Begum Article was opened in 1788. At that time, one hundred and eighty-six Peers were present; on this day, from twenty-two to twenty-eight: one hundred and twenty-one changes in the Peerage, since the year 1788, having taken place." *

Committee of the House of Commons to expedite the Trial.

Retirement of Lord Thurlow.

Changes in the Peerage.

The first and second days of the proceedings in the year 1793—the ninety-fifth and ninety-sixth of the trial—were occupied by Mr. Law's opening of the Defence on the 1793.

Mr. Law's opening of the Defence on the second Charge.

* "History of the Trial;" Part vi., p. 39, note.

1793. second Article of the Charge, relating to the treatment of the Begums of Oude.

Documentary evidence.

On the 20th of February, the ninety-seventh day of the trial, documentary evidence was handed in by Mr. Hastings' Counsel, to show the amount of treasure in the possession of the Bow Begum, at the time of Suja-ud-Dowla's death, and to prove that it was the Nawab's property, entrusted to her custody in his lifetime; that the succeeding Nawab was intitled to all personal property of his father, save only an eighth part of what remained after paying his debts; and that he was in great pecuniary distress on account of a heavy debt to the Company, inherited from his predecessor.

Mr. Bristow's correspondence.

They then read a portion of the voluminous correspondence of Mr. Bristow, the Company's Resident at the court of Oude, with the Governor General and Council, on the subject of the Nawab's treaty with the Bow Begum, in 1775, and his situation in consequence of her non-observance of it.

Objection to reading extracts from documents.

During the proceedings, a long discussion took place on an objection raised by the Managers to the practice by the Counsel of reading extracts only from the documents produced; unless the Appendix, in which the remainder of the papers would appear, might be considered as evidence of itself. The Managers were told that it had already been laid down that a document inserted in the Appendix was not of itself evidence, simply because it was there inserted; but that they were at liberty to have the remainder of the several papers read if they chose it; and that, if they would, at the next sitting of the Court, point out such parts of the documents as they wished to have read, they would be entered as of the Minutes of the day. Mr. Sheridan took part in the discussion; the practice of reading extracts from papers and printing the entire documents in an Appendix having been adopted, early in the trial, at his suggestion.

On the 26th of February, the ninety-eighth day of the trial, Capt. John Gordon, who had been employed in the Nawab of Oude's service in the year 1781, gave evidence of acts of resistance by the Begum's troops to the force under his command. He was cross-examined by Mr. Burke; who wished to have reserved the right of calling the witness on the following court-day for further examination. Mr. Law insisted on the duty of the Managers to finish their cross-examination of one witness before another was called. The Lord Chancellor supported the Counsel, but pointed out that the Managers had the power of filling up the remainder of the day's sitting by frivolous questions, thus obtaining the privilege of pursuing the cross-examination on the following day--a course of proceeding which was immediately denounced by Lord Stanhope as scandalous and unworthy of the Managers. 1793. Evidence of Capt. Gordon. Attempt to suspend cross-examination.

On the 27th of February, Capt. Williams gave evidence of hostile acts of the Begums directed against the Company. The examination was frequently interrupted by objections of the Managers—principally of Mr. Sheridan—to the witness's statements of hearsay reports being admitted as evidence. At the end of the examination, Mr. Hastings made the following address to the Court:— Evidence of Capt. Williams. Objection to hearsay reports.

"My Lords, I fear to lose the short time that remains, and therefore I request that you will have the goodness to afford me a few moments of that time. I am not prepared for what I wish to say to your Lordships. I have just received an intimation, which I hope I may mention without any disrespect to the Court, because it respects a thing which may be done, and which is in your Lordships' discretion, and which it is impossible for me to know; and it would be very disrespectful for me even to inquire whether it is likely to happen; but I may express my own apprehensions upon the subject, supposing that it may happen. Mr. Hasting's address, 27th Feb. 1793.

"It has been intimated to me that this is probably the last day that I shall have the honour of seeing your Lordships in this place before the adjournment which will be necessary when the judges go on the circuit. My Lords, I receive this intimation with very great alarm and great un-

1793. easiness. The gentleman who is now under examination, I suppose, will be called again to your bar, and must undergo a counter-examination on the part of the Managers. I do not know that my own Counsel have yet done with him. There are other witnesses.

Mr. Hasting's address, 27th Feb. 1793.

"My Lords, it is to me painful, whether it is so to any one else or not, that I have been under the necessity of keeping gentlemen—many of whom I respect—many of whom I have a very great affection for—that I have kept them from year to year. I have brought them from their families, many from a very great distance, to attend here. They have attended from year to year, from day to day, and have been obliged to go back again.

"My Lords, while I was sitting here yesterday I received a note that Mr. John Scott, of Tanda, one whose name your Lordships have frequently heard, and who was summoned to attend upon your Lordships as a witness in my defence upon this Article, is dead—that he died as he was preparing to set out. My Lords, in a trial like this, how can I depend upon justice being fully done to me, when I am to run such hazards even of the evidence that I am about to produce? The life of man is scarcely to be estimated beyond a twelvemonth. One gentleman, I have been told, has been called from his family at Exeter. Another has attended from the north of Scotland—Major Lumsden. Another gentleman, is lately returned from India, having obtained leave of absence, because it was a time of peace, when his services were not much wanted, and is now impatient to return to his service there—Colonel Duff: and, my Lords, if I know his character, even for the sake of doing me justice, he will not remain after the time when it will be necessary for his honour and for his duty that he should return. But, if an adjournment is to take place for five or six weeks and he is not examined, my Lords, I must lose him—I may lose the other witnesses, as I have many. Therefore, my Lords, I hope I am justified in the request that I make by the example of one of the honourable Managers at my left hand. I heard him affirm that he had a right to request—I beg that what I say may not be deemed disrespectful—that he had a right to request your Lordships to adjourn. I pray your Lordships not to adjourn. If he had a right, I have an equal right. I have an equal right with the Managers, or with the whole House of Commons, were they here. In this place, I stand upon an equal footing with them.

"My present request is that you will have the goodness to meet as often as it is possible to meet, between this and the necessary time for adjournment, to enable the judges to go the circuit; that my Defence upon this Article may be closed, or at least—my Counsel seem to be satisfied with that, and I cannot possibly be satisfied with less—that the parol evidence may be closed. It will be hard, my Lords, to wait with half the business done—with your Lordships' attention broken, and your recollections to be refreshed, when you come again, by the repetition perhaps

1793.

Mr. Hasting's address, 27th Feb. 1793.

of all that you have heard. I pray, therefore, that you will have the goodness to meet, if I may ask it, from day to day, until as many days shall be given, or as much time shall be given, as shall be necessary for the evidence to be closed upon this Article.

"My Lords, having asked so much, may I be permitted to occupy—I hope not to waste—a few more minutes of your attention? My Lords, when the near approach of the time which was appointed, or expected, to put an end to the sitting of Parliament, in the year 1788, made it necessary for your Lordships to adjourn my trial to another year, I felt the suspension as an intolerable grievance, of which there was no example in the annals of this kingdom, if of any other. But, my Lords, I am now in the sixth year of my prosecution—nay more, in the eighth, if the inquest of the House of Commons which preceded this impeachment be added to it, as it ought, since its effect upon me is the same. And through how many more this scourge is to be hung over my head I know not: there may be no end.

"But, my Lords, I do most solemnly conjure your Lordships that, if by any means which you can devise I may be freed from the dread of more annual adjournments of this trial, and assured that this session shall end it, you will have the goodness to afford me that grace. My Lords, I do not—I hope I shall not be understood to—express a wish for any other end than the judgment of this Court. Any other I shall consider, from whatever quarter it comes—and I know that it cannot come from your Lordships—as a direct denial of justice. No, my Lords, I require no more than judgment, and to be allowed a chance of it, while I have a chance of living to receive it.

"My Lords, I hope also that I shall not be misunderstood to intend the smallest reflection upon your Lordships for the delays of which I complain. It would be unbecoming in me to ascribe them to any personal agency; but I may, without a breach of decorum, say that, in the causes which I have in my own mind and in the fullest conviction assigned for them, this Court has no concern. Nor have I ever, in secret, felt a tendency to repine at any resolutions of your Lordships, without reproaching myself with injustice and ingratitude, remembering the long, painful and assiduous, attention you have bestowed upon the proceedings of this trial. Nor, in praying your Lordships for redress, do I know that I pray for that which it is in your own immediate power to grant—though it may be to facilitate, or by mediation to bring to pass eventually, that which you may not be called to command. To your wisdom I appeal for the means, to your justice for their application. I solicit only their effect.

"My Lords, I have said that I solicit from your Lordships and request that which it may not be in your power to command. I ought to explain myself. The last year, my Lords, I did make trial of another channel—other means of obtaining that which I now so earnestly desire—but it

1793. was without effect. I believe I may attribute my want of success to my own delicacy, which withheld me from making the trial until it was too late to expect, on reasonable grounds, a successful issue of it. My Lords, I ventured to present a petition to His Majesty himself. I am sure that, if it could have been granted, it would have been granted. I am now sure, my Lords, that nothing but that which is in his power to grant will give me the prospect, which I so earnestly desire, of seeing this trial brought to an end during the present session of Parliament.

Mr. Hasting's address, 27th Feb. 1793.

"I was made to expect, some time ago, that means would have been taken in another quarter. I had heard that the honourable the House of Commons had come to a unanimous resolution to devise some means for accelerating the issue of this trial: and, from the universal opinion that I have heard entertained of the length of it, and from my knowledge that there never was an example in this kingdom of a trial even of one year's duration, I did believe and hope still that this year would have been the last. But I have no reason now to believe that the end is nearer than it was; and therefore it is that I make this my last request. I cannot request of your Lordships that you will resolve to sit this year until the trial shall be closed. My request to your Lordships is, that you will be so good as to endeavour to obtain that which you cannot grant me—that is, a continuation of the present session of Parliament, until this trial shall be closed and your judgment pronounced upon it.

"I have said that I was too late, the last year, in making the application in what I conceive to be the regular way. I now make that application to your Lordships; and I hope that, through your Lordships, I may obtain that which I so earnestly desire. In the meantime, my present request is that you will have the goodness to sit for so many days and so long as to allow the evidence upon this Article to be closed."*

Mr. Burke's answer.

Mr. Burke, in answer, offered on the part of the Commons to do every thing their Lordships might propose to expedite the trial; but reminded Mr. Hastings that the Court was at present occupied with his Defence, which it was only in his own power to shorten; while the frequency of sittings of the Court depended on their Lordships' pleasure. Mr. Sheridan rose to speak, but the adjournment was moved.

Delay by non-attendance of the Managers.

On the 28th of February, the Lords assembled at twelve o'clock, but proceedings were delayed by the non-attendance of the Managers for the Commons.† When the Court was

* Gurney's Report, MS.

† "Mr. Burke, afterwards, in the House of Commons, mentioned this circircumstance to have arisen from the Lords having assembled earlier than

formed, Mr. Burke went through his cross-examination of Capt. Williams. After which, Mr. Sheridan addressed the Court, stating that he wished to put certain questions to the witness. He professed his anxiety to shorten proceedings, and proposed that, as all the evidence given by the witness was of reports which he had not proved had reached Mr. Hastings, and, therefore, was worthless, and as the Counsel professed they were able to prove the communication of the reports to Mr. Hastings, they should at once produce this link which was wanting to give validity to the evidence. The discussion which ensued was stopped by the Lord Chancellor as irregular; and the Court adjourned. 1793.

Cross-examination of Capt. Williams.

On the 1st of March, the 101st day of the trial, the attention of the Court was engaged in the cross-examination of Capt. Williams by Mr. Burke and Mr. Sheridan, principally on two points; first, his authority for putting to death a certain Raja Mustafa Khan, which he showed to have been done by command of his superior officer, Col. Hannay, and that the Raja had been condemned to death by the Nawab of Oude as a freebooter and notorious rebel; secondly, respecting a Persian letter, supposed to be from an agent of the Begums, and conveying orders to prevent the Rajas from lending assistance to the Company's officers, and which had been produced to the Court by the Counsel of Mr. Hastings; the object of the Managers being to throw discredit on the letter.

Remonstrance of the Court against interruptions in the examination of witnesses.

The proceedings on the following day, the 2nd of March, commenced with an address from the Lord Chancellor to the Managers and the Counsel, enjoining them to observe more

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usual, and without having sent word to the Commons. The consequence of which was that there was no House at the proper time; and that the Managers, under these circumstances, had felt it necessary to go into the Hall without a House having been previously formed. Mr. Pitt moved that the House approved their conduct; which was agreed to *nem. con.*"—"History of the Trial;" Part vi., p. 43.

1793. strictly the rule of not interrupting the examinations of witnesses; reminding them that, while the examination in chief was being conducted by one party, the duty of the other party was to wait till it should be closed, before commencing their cross-examination; and that, during the examination of a witness by one party, no question whatever should be interposed by the other. Mr. Burke expressed, on the part of the Managers, their willingness to adhere to the regulation, and at the same time stated that he was authorised by the Commons, with a view to expedite the trial, to consent to proceed with it during the circuit of the judges, should the Court desire to do so. The Counsel for Mr. Hastings then examined witnesses to prove the disaffection of the Begums to the Company's government. Lieut. Shuldham, Col. Duff and Major Lumsden, were called. They each of them spoke also to the high estimation in which Mr. Hastings was held in India for ability in his government and for personal amiability. The examinations were conducted by Mr. Dallas, and the cross-examinations by Mr. Burke and Mr. Sheridan.

Disaffection of the Begums.

High estimation of Mr. Hastings in India.

Major Lumsden's evidence.

The Court was then adjourned to the 12th of April; on which day Major Lumsden was further examined with respect to the insurrection in Oude; and Mr. John Wombwell, formerly paymaster, treasurer and auditor of accounts in Lucknow, gave evidence respecting the disaffection of the Begums. He was minutely cross-examined by Mr. Burke respecting the salaries and pensions paid to English gentlemen in Oude from the Nawab's treasury.*

Mr. Wombwell's evidence.

* The observations in the "History of the Trial,"—in which, it must be admitted, a very decided partiality towards Mr. Hastings' cause, is shown at this period of the proceedings—on the subject of Mr. Burke's cross-examination of Mr. Wombwell, are as follows: "Question succeeded question, until the patience of every human being present appeared to be entirely exhausted; many of the Lords showed strong signs of impatience, and the Archbishop of York declared with a very strong and pointed emphasis, that the conduct of Mr. Burke was *illiberal*."—Part v., p. 47. According to Gurney's Report, the

On the 18th of April, Mr. Auriol, who had been secretary to the Council of Calcutta, was examined respecting the distresses of the Company's Government in India, which occasioned the demands of assistance made by Mr. Hastings on Cheyt Sing and the Begums of Oude. Capt. Syme and Mr. Paxton were called to prove—the one, the death of Mr. Scott, of Tanda, in Oude, who could have spoken to the hostile intentions of the Begums; the other, the return of Major Macdonald to India, who had been ready to give evidence on the same subject. Mr. Wright, accountant of the India House, and Mr. Hudson, of the India House, were shortly questioned on special points of the evidence. Various documents were then handed in by the Counsel and read. 1793. Examination of Mr. Auriol.

On the 20th of April, the 105th day of the trial, Mr. Plumer put in numerous letters relating to the Begum Charge, extracts from many of which had been read by the Managers. On the tender of a report of Sir John Shore—then a member of the Council of Calcutta, and at this time successor to Lord Cornwallis as Governor General—the object of which was to prove that, by the constitution of the Mogul empire, a jagir is in its nature resumable, Mr. Burke objected to the admission of the paper, as the production of "one of the persons concerned in fabricating the Defence of Mr. Hastings"; and further, because he might and ought to have been examined on the subject in person before he left the country for his government. Mr. Plumer answered the objection. The Lord Chancellor decided that the evidence wa admissible. Earl Stanhope observed that, though the Managers objected to the evidence of Sir John Shore, on the ground of his being an accomplice of Mr. Hastings, they Documentary evidence. Objection to Sir J. Shore's report.

observation of the Archbishop was occasioned by a question put by Mr. Burke to Mr. Wombwell, of which he said:—"I cannot help thinking that the question tends to lead the witness to impeach himself. The question is illiberal."—MS. Report; *sub die*, p. 82. The question had reference to pensions supposed to be received by Englishmen in Oude.

1793. had themselves called him as a witness. Mr. Burke, in replying, denied that "any witness in India must be considered in any other light than what the lawyers call witnesses taken from the enemy's camp." The last head of evidence was brought forward to meet an objection by the Managers to the admission of the affidavits accompanying Mr. Hastings' Narrative of the Insurrection in Benares, as evidence, on the ground that statements in them implicated Saadat Ali, the treasurer to the Begums. After some resistance from Mr. Burke, the reading of the papers was proceeded with, when Mr. Wyndham, one of the Managers, protested against their reception as evidence, as being directed to the question of the guilt or innocence of Saadat Ali. A discussion ensued, in which Sir Gilbert Elliot took a leading part. In the end, the Lord Chancellor stated that the Judges, who had heard the debate upon the evidence, agreed with him that it was not admissible. Accordingly, the whole of the evidence which had been adduced on this head was ordered to be struck out.

Admission of the affidavits accompanying Mr. Hastings' narrative.

Mr. Plumer's summing in defence on the second Charge.

On the 25th of April, the 106th day of the trial, Mr. Plumer commenced his summing of the evidence given in on the part of the Defendant on the second Article of the Charge, relating to the Begums of Oude. His speech was continued through the 30th of the same month, and the 2d and 6th of May. It is the third of the series included in the present volume.

Mr. Dallas' opening of defence on the 6th, 7th, and 14th Articles.

On the 9th of May, the 110th day of the trial, Mr. Dallas opened the evidence in defence on the sixth, a part of the seventh and the fourteenth, Articles of the Charge, imputing bribery and corruption, and occupied that and the three following court-days—viz., the 16th, 17th, and 24th of May—in the delivery of his speech.* On the

* This Speech of Mr. Dallas is highly praised by Mr. Adolphus. He characterises it as "a speech of animated eloquence and powerful argumentation, not unmixed with polished irony and cutting sarcasm;" and adds that,

second day, the 16th of May, after the Peers had left Westminster Hall and returned to their Chamber, the following petition from Mr. Hastings was presented to them by Lord Walsingham:— 1793.

"That your Petitioner once more makes his appeal, in the hope that it will be his last, to the justice of your Lordships; that he forbears to state the too well-known hardships of his case, or the grounds on which he most solemnly asserts his belief, that, unless your Lordships, feeling as he feels the enormity of the delays which have attended his long-protracted trial, shall resolve it to be brought to a conclusion during this Session of Parliament, it will not, in the ordinary and permitted course, be ended, until the judgment of another year shall have added to the chances of its being concluded by other causes than the legal verdict of your Lordships, which, your Lordships have been told by one of the Managers of the prosecution, must inevitably fall with infamy either on the head of your Petitioner, or on those who have consumed so many years of your Lordships' attendance in labouring to prove their allegations against him. That, although it may not be possible for your Petitioner to know the time which may be destined to the duration of the present session of Parliament, yet he cannot be insensible to the reports which he has heard of the short term which is asssigned to it; and even its uncertainty is to him a source of continual alarm. That, as an humble individual, impressed with the firmest conviction of your Lordships' justice and humanity, he implores your Lordships to grant him that grace, which, as a British subject, he might demand as his undoubted birth-right, the benefit of undenied and undelayed justice; and that your Lordships will not leave him a single exception to the rest of his fellow-subjects of this kingdom, whose hearts attest the wisdom of its constitution, and who boast of the blessings which they enjoy under it; blessings in which he cannot be said to participate, who, having been the subject of a criminal prosecution during six years, is yet doomed to linger out his life in the same unmerited state of depression, suspense, and (but for the breath of public opinion, and the hopes of life sustaining him) of universal and perpetual ignominy.

Mr. Hastings' petition to the House of Lords, 16th May, 1793.

"Your Petitioner, therefore, most humbly and fervently prays your Lordships, on whose justice and honour he places his firmest reliance, to adopt such means as to your Lordships' wisdom may seem best calculated to accomplish the end which your Petitioner so anxiously solicits, namely, a close of this long-depending trial during the present session of Parliament. (Signed) "WARREN HASTINGS."*

"no moment was wasted on useless dissertation or rhetorical embellishment, but all was close, well defined reasoning, strongly combined and judiciously applied."—History of England; Vol. vi., p. 191.

* Printed in the "History of the Trial;" Part vi., p. 60.

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Mr. Hastings' address to the Court, offering to contract his Defence, 24th May, 1793.

Immediately on the close of Mr. Dallas' speech Mr. Hastings rose to beg of the Court that the length of their sittings might be extended; offering so to contract the evidence to be produced in his Defence on the Articles of Presents opened by Mr. Dallas, and on the remaining Article of Contracts, that, by foregoing the advantage of his Counsel's observations on them, the rest of his Defence might be concluded within a period of three days. The following are the terms of his address:—

"My Lords, I venture to solicit the attention of your Lordships to the situation in which this trial at present stands.

"I hope for your Lordships' indulgence, in requesting to be allowed such further time in the course of each day's days sitting as may enable me to bring the remainder of my Defence, if no interruptions intervene, within the probable period of three days more.

"I hope, by the means of such indulgence, to conclude my evidence on the Article now under consideration within the compass of one day. I am informed that the observations of my Counsel upon it will only occupy another, and the gentleman upon my right hand (Mr. Law) is willing to waive any observations, that the Defence may be the sooner closed. In that case, one day will be sufficient for this Article. The abridged evidence with which I mean to trouble your Lordships on the only remaining Article, that of Contracts, may be comprised within the space of one day more. I am willing to forego the benefit of a more detailed Defence, in order to enable the Managers for the Commons fully to conclude their reply within the course of the present session; an expectation which, I trust, I do not unreasonably entertain, in this advanced period of a trial that has been so many years depending.

"I am well aware of the disadvantage to which I subject my Defence on this Article, by leaving the evidence unstated and unapplied, to make out its own effect; and it is with reluctance that I deprive myself of the benefit of those talents which have been so ably displayed on the former parts of my Defence; for it is to those talents, aided by the zeal and cordial affection which have animated them to their best exertions, that I am now indebted for the hope and assurance, which I confidently entertain, that, though I should not live to receive the sanction of your Lordships' acquittal, my name at least shall not descend blasted with infamy to posterity, but be recorded with those of the many other victims of false opinion, some of higher worth, none of better intentions, who have done service to the States which employed them, and been requited with unthankfulness and persecution.

"My Lords, I consider the resolution which I have taken as a sacrifice;

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and I make it with the greater cheerfulness, as it may, and must in some degree, prove no less an accommodation to your Lordships' time than the means—if your Lordships shall so permit it—of obtaining my own deliverance from a state of suspense which is become almost insupportable."*

Mr. Burke's answer.

Mr. Burke, in his observations on this proposal, cautioned Mr. Hastings not to omit to make his Defence complete. He left it to the Court to consider the propriety of the terms Mr. Hastings had used, implying ingratitude in the Commons for services he had rendered to his country. Mr. Hastings was at liberty to narrow the bounds of his Defence to any limit it might please him; but a suspicion might arise whether, in doing so, he had it not in view, in case of being found guilty on the charges, to insinuate that the testimony he had withheld might, if produced, have cleared his character. Mr. Fox, in a short address, justified his colleague in these remarks.

Documentary evidence relating to Charge of Presents.

Examination of Mr. Auriol.

On the 25th of May, the 114th day of the trial, numerous documents were handed in by Mr. Law as evidence in support of Mr. Dallas' opening of the Charge relating to Presents. Mr. Auriol, the late Secretary to the Council of Calcutta, was called in and examined by the Counsel; and was afterwards cross-examined at great length by Mr. Burke. The pertinacity with which the Manager plied this witness with question after question, to elicit facts on which he appeared unable to give evidence, occasioned an unusual interruption to the proceedings by an outbreak of indignation from his Grace the Archbishop of York. Mr. Burke had asked Mr. Auriol whether, while he was in India, he had heard a rumour of a present having been made to Mr. Hastings from Raja Kelleram; to which the witness had answered that he did not recollect to have heard such a rumour. Mr. Burke was endeavouring by further questions to obtain a more satisfactory answer, but was stopped by

Interruption by the Archbishop of York of the cross-examination.

* Gurney's Report, MS.; and "History of the Trial;" Part vi., p. 63.

1793. an observation from the Lord Chancellor, that the witness had already stated that he knew nothing of the report. Mr. Burke replied that he wanted "to refresh his memory whether he does not know something of it; and it appears there are several circumstances concerning it which he does know." The Archbishop, sympathising with the witness, exclaimed "Upon my word, my Lords, this proceeding is intolerable! The gentleman is treated at your bar as a pick-pocket; and no gentleman has been treated there as a gentleman. If Robespierre and Marat were in the Managers' box, they could not say anything more inhuman and more against all sentiments of honour and morality than what we have been often used to since this trial commenced." Mr. Burke rightly declined to notice the interruption, saying, "I hope your Lordships do not think I am bound so much as to know or suppose that I have heard one word of what was uttered. I forget it, and pass by immediately to the business."* The continuance of the cross-examination, however, on the subject of the rumour referred to, was objected to by both Earl Stanhope and Lord Somers.

Evidence of Mr. Woodman relative to Mr. Hasting's fortune.

After Mr. Auriol had been allowed to retire, Mr. Woodman, a relative by marriage of Mr. Hastings, and who, in conjunction with Mr. Francis Sykes and Mr. Waller, was his attorney in England, was called by Mr. Law to disprove a statement of the Managers, that Mr. Hastings had amassed a fortune of 238,000*l.* whilst in India. He stated, that, though remittances to that amount had been made by Mr. Hastings, the greater part of them were for other persons, and that the total sum of Mr. Hastings' own money held by them in June, 1785, at the time of his return from India, was 72,463*l.*, and in January, 1786, it was 65,322*l.*†

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* Gurney's Report, MS., p. 109.
† *Ibid.*, p. 128.

1793.

Mr. Halhed and Mr. Wright were shortly examined respecting an account of payment for salaries of pundits employed in composing the code of Hindu laws, and a statement of expenses of Mr. Hastings in the office of Governor General. The evidence for the Defence was then declared to be closed on the Charge of Presents.

Close of evidence in Defence on Charge of Presents.

Mr. Plumer then informed the Court that Mr. Hastings waived his right of commenting by his Counsel on the evidence which had been produced on that Charge, and that he would immediately proceed to bring forward the abridged evidence in defence upon the last-remaining Charge—the fourth Article—relating to Contracts. Mr. Plumer occupied the remainder of the day in handing in documents in reference to the opium contract.

Abridgement of evidence in Defence on the fourth Article.

On the 27th of May, Mr. Plumer completed the documentary evidence on the opium contract. He then called Mr. Wright to give evidence on the same part of the Charge. Mr. Burke was interrupted by Earl Stanhope in his cross-examination of the witness whilst questioning him on the contents of the Company's books and correspondence. His Lordship declared — "It was perfectly impossible to permit, day after day, parol evidence to be given of matters of fact that are in the books: the books themselves ought to be produced." Mr. Burke, before answering the objection to his examination, commented with warmth on the informality of an individual member of the Court reproving the Managers for their conduct—"On the part of the Managers and on the part of the Commons of Great Britain, we demand in this place of your Lordships, that any remarks that shall be made, tending to censure and admonish the Managers at this bar, shall be the acts of this House; to which Court, and not to any of the individuals of it, we imagine ourselves, while we stand here as suitors, to be subject:—not subject to animadversion or reproof, but subject

Opium contract.

Evidence of Mr. Wright.

Interruption by Earl Stanhope of the cross-examination.

Mr. Burke's remonstrance.

1793. to the orders and directions of the Court for the conduct of the proceedings; reproof we are subjected to by none, but by our own constituents only. And I must beg leave, once for all, to observe to your Lordships that nothing can tend to lead more to unpleasantness and disagreeable altercations with individual members of this House—which I am sure your Lordships would wish to avoid as much as we do—than noble Lords making the kind of observation that is made by the noble Lord, and some other late observations made with regard to the Managers in this place. I must, after having heard this, and wishing never to hear such in future, desire, according to the orderly proceedings of Parliament, that, if any remarks are made, they shall be suggested to your Lordships, who preside in this Court, or, if debate is required, that you adjourn to the chamber of Parliament and take the sense of this Court; because, by this Court alone we are to be guided." Earl Stanhope immediately moved to adjourn to the chamber of Parliament. On the return of the Court, the Lord Chancellor announced the decision of the House that it was not competent for the Managers to put the question proposed by Mr. Burke.

Decision of the Court.

Observations by Mr. Fox.

Mr. Fox, in reference to this judgment, desired that the principle of examination it enforced should be applied impartially; for that it had been neglected in the examination in chief that day. Mr. Burke, in his remarks upon the decision of the House, stated that the Managers submitted to it as such without acquiescing in it as a principle.*

The bullock contract.

Mr. Auriol's agency.

Mr. Plumer resumed with the documentary evidence relating to the bullock contract. Mr. Dallas followed with that relating to the appointment of Mr. Auriol as agent

* MS. Report, *sub die*, p. 48. In the "History of the Trial," this incident is erroneously referred to the proceedings at a later period of the day. See Part vi., p. 66.

for supplying provisions to the Presidency of Madras. He then called Mr. Auriol, to give personal evidence on the same subject. In justification of the closeness of his cross-examination of this witness—who held also the appointment of secretary to the Council at Calcutta—Mr. Burke stated that he had been called by the Defendant; that he was moreover an interested party, and on that account it was necessary to examine him with more than usual care and attention. 1793.

Cross-examination of Mr. Auriol.

On the 28th of May, the 116th day of the trial, Mr. Dallas gave in documentary evidence relative to Mr. Belli's agency for the supply of stores and provisions for the garrison of Fort William. Mr. Hudson was examined to prove documents produced to show the propriety of certain appointments made by Mr. Hastings; and Major Scott was called to prove that Mr. Belli was now in India. In reference to this latter evidence, Mr. Burke observed that he thought it singular, if Mr. Belli had been in England since the commencement of the trial, that he had not been examined; adding that their Lordships would make their own inference upon it. Mr. Wright, auditor of accounts in the India House, was called to explain the difference between sicca and current rupees, in reference to an account of Mr. Auriol.

Mr. Belli's agency.

Mr. Law then stated that, the Managers having given in evidence documents to show the opinion entertained by the natives of India of Mr. Hastings' government, and another setting forth certain consequences that were supposed to have ensued from the mal-administration of the country of the Nawab of Oude, he proposed to give in evidence other documents—the representations of natives of India—expressing a very different sense of the character of Mr. Hastings' government. Mr. Burke questioned whether testimonials to character were admissible in a court of justice. Mr. Law claimed their admission on the ground of consent

Testimonials of natives of India in favour of Mr. Hastings.

1793. already given by Mr. Burke*, as well as from consideration of their having been frequently commented on by him, and that he had himself promised to produce them. Mr. Burke answered, that the Managers had no objection to the admission of the testimonials; although he had considered it his duty to notice the difficulty the Court might feel in receiving them. The papers were accordingly read; and Mr. Burke questioned Mr. Hudson as to the manner in which the testimonials had been procured. This terminated the evidence for the Defence; and, as Mr. Hastings had waived the advantage of his Counsel's summing of the Articles on Presents, and of both the opening and summing on the Article of Contracts, his case was now completely closed. But, before the adjournment, Mr. Hastings addressed the Court, making a solemn protestation of his innocence, and praying for the prosecution of the trial to its close during the present session. The address appears to have been read from a written paper. It was in the following terms:—

Close of the Defence.

Mr. Hasting's address, 28th May, 1793.

"My Lords, my evidence is now brought to its close.

"Sufficient has, I trust, been already done for every immediate purpose of necessary justification. And it is not, my Lords, from any apprehension which I entertain lest any defects of this kind should exist, or from a vain opinion that they could be supplied by me, that I present myself once more to your Lordships' attention. No, my Lords; I leave the proof which I have offered to its just and effectual operation, without any degree of doubtful anxiety for the issue. But, my Lords, I rise for a purpose which no external testimony can adequately supply—to convey to your Lordships' minds a satisfaction which honourable minds may possibly expect, and which the solemn asseverations of a man impressed with a due sense of the sacred obligations of religion and honour can alone adequately convey.

"I know that the actual motives of human conduct are often dark and mysterious, and sometimes inscrutable. As far as the subject is capable of farther ascertainment, and the truth can be sealed by a still more solemn attestation, it is a duty which innocence owes to itself to afford it.

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* See Mr. Burke's Speech of the 21st of April, 1789; Vol. ii., p. 5.

"In the presence, therefore, of that Being from whom no secrets are hid, I do, upon a full review and scrutiny of my past life, unequivocally and conscientiously declare that, in the administration of that trust of government which was during so many years confided to me, I did in no instance intentionally sacrifice the interests of my country to any private views of my own personal advantage; that, according to my best skill and judgment, I invariably promoted the essential interests of my employers, the happiness and prosperity of the people committed to my charge, and the welfare and honour of my country; and at no time with more entire devotion of mind and purpose to these objects than during that period in which my accusers have endeavoured to represent me as occupied and engrossed by the base pursuit of low, sordid and interdicted, emolument.

1793.

Mr. Hasting's address, 28th May, 1793.

"It may be expected of me to say something in addition to what you have heard from Mr. Woodman respecting the actual state and extent of my fortune.

"He has proved the total amount of my remittances from India during the period of my government, and that the balance of my fortune when last adjusted, shortly after my return to England in 1785, amounted to little more than 65,000*l.*

"I protest, in the name of Almighty God, that I made no remittances to England during that period which were not made to him and my other attorneys joined in trust with him; that I had no other persons in England or Europe in trust of my pecuniary concerns; and that his account of those remittances is accurately true, according to my best means of knowledge and belief upon the subject; and that, including those remittances, I at no time possessed a fortune which exceeded at its most extended amount the sum of 100,000*l.*; and in this calculation I would be understood to comprehend every kind and description of property whatsoever; that, at the period of my return to England, my fortune did not exceed the balance already mentioned to have been then in the hands of my attorneys by more than the sum of 25,000*l.*, amounting, on the largest calculation, to an aggregate sum of between 80,000*l.* and 90,000*l.*; and all the property which I possess stands pledged, at the present moment, for the discharge of such debts as I have contracted since the commencement of this long depending trial. These are the enormous fruits of thirteen years of imputed rapacity and peculation, and of upwards of thirty years of active and important service!

"My Lords, I know not how I can more fully and explicitly disavow every purpose of appropriating to my own benefit any of the various sums received and applied by me to the Company's service, in moments of extreme peril and exigency, than in the very terms in which I expressed such disavowal at your Lordships' bar, in the month of June, 1791. I again repeat that 'I solemnly, and with a pure

1793.

Mr. Hasting's address, 28th May, 1793.

conscience, affirm that I never did harbour such a thought for a single instant.'

"If, in addition to the proof upon your Lordships' table of the justice and necessity of the measures which are the subjects of the two first Articles of the Charge, it can be required of me by an act of solemn and sacred attestation, on my part, to vouch the truth of my Defence in these particulars, and to vindicate my character from the unfounded charge of malice, alleged to have been entertained by me against the immediate objects of those measures, I once more call God to witness that no motive of personal enmity, no views of personal advantage to myself or others, induced the adoption on my part of any of those measures for which I am at this day criminally questioned; but that, in every instance, I acted under the immediate and urgent sense of public duty, in obedience to the irresistible demands of public safety, and to vindicate the just rights of the empire committed to my care against those who, in a moment of its greatest peril, were engaged in hostile confederacy to destroy it.

"I have no doubts but that, upon a fair review of all the existing circumstances, and the means of information then before me, no lavish or improper expenditure of public money will be found to have taken place, in respect to the contracts formed during my administration.

"For the prudence and success of the regulations adopted and pursued, in respect to the control and management of the public revenue, I trust I may be allowed to appeal to the flourishing condition which the Company's provinces enjoyed during the period of my government, and which has been, from the continued operation of the same cause, in a course of progressive improvement to the present hour.

"I know that your Lordships will, in your own enlightened and impartial wisdom, justly estimate the difficulties by which I was surrounded during a long and arduous period of public service—that you will allow for all the embarrassments arising from the long counteraction of my associates in the government, for errors resulting from the honest imperfection of my own judgment, from occasional deference to the counsels of others, and from the varying sense of expediency which at different periods governed my own.

"Your Lordships well know that the imperious exigencies of public affairs often present to the servants of the state no alternative but the painful choice of contending evils.

"The transcendant and peremptory duty of my situation was to devise and to procure the necessary means of public safety. Feeling, as I did, the exigencies of the Government as my own, and every pressure upon them resting with equal weight upon my mind; besieged, as at some times I was, by the hourly and clamorous importunities of every department of the military service, goaded at others with the cries of our then famished settlements on the coast of Coromandel; should I have,

deserved well, I do not say of my country, but of the common cause of suffering humanity, if I had punctiliously stood aloof from those means of supply which gratitude or expectation enabled me to appropriate to the instant relief of such distresses? 1793.

Mr. Hasting's address, 28th May, 1793.

"The whole tenor and conduct of my public life is now, my Lords, before you. It has undergone a scrutiny of such extent and severity as can find no parallel in former times, and I trust will, in many of the peculiar circumstances which have characterised and distinguished this trial, leave no example to the future.

"My Lords, I have now performed the most solemn duty of my life, and with this I close my Defence.

"I may now, I trust, assuredly consider myself as arrived at the threshold of my deliverance—at that period when no delay and procrastination can prevent the speedy and final termination of the proceedings now depending before your Lordships.

"After such recent and acceptable proof, on the part of your Lordships, of your earnest disposition to accelerate the conclusion of this trial, it would betray an unwarranted and unbecoming distrust of your justice to offer any request to your Lordships on this subject, had I not other causes of apprehension. At this momentous and awful crisis, ignorant of what may be in the minds of others, I am compelled to obviate every possible, even though improbable, danger.

"In the short address which I made to your Lordships on Friday last, I stated that I should waive the observations of my Counsel on the evidence of the Article then before the Court, and both the opening and application of the evidence on the next; and that I made these sacrifices, well aware of their importance, for the express purpose of affording ample time to my prosecutors, during what remained of the probable term of this session, to make their reply.

"If the Managers for the Commons had been equally desirous of accelerating the close of this trial—and I had a right to suppose that they were so, from their repeated declarations to that effect—what I had said might have been construed as an offer of mutual accommodation; but, my Lords, it was received with resentment, and answered with reproach, and worse, insinuation.

"What other conclusion can I put upon this conduct but that which is conveyed to my ears from every quarter—that they mean to endeavour to prevail on your Lordships to adjourn over this trial to its seventh year, that one more may be given them to prepare their replies? I do not know that this is their intention, but I may be allowed to suppose it; and, though impressed with the firmest confidence of the just and favourable disposition of your Lordships, I cannot but dread the event of a question in which my rights may be at issue with such opponents as the Managers of this prosecution, speaking in the name of the House of Commons, and of all the Commons of Great Britain.

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Mr. Hasting's address, 28th May, 1793.

"To meet such an attempt, if made, I humbly offer to your Lordships the following arguments, most anxiously recommending them to your consideration.

"In an address to a court of British Peers, I cannot offend by pleading the rights which I possess as a British subject—rights which are assured to me, in common with all my fellow subjects of this realm, by the pledges of ancient charters, and the sanction of an oath the most solemn that can be tendered or taken by man. My Lords, I claim the performance of that sacred promise, in all its implied obligations that justice be administered to me, and that it be administered now.

"In the long period of another year, I may be numbered with those of my noble judges whom I have, with sorrow, seen drop off, year after year; and, in the aggravation of the loss which I have sustained by their deaths, I may thus lose the judgment of their survivors by my own.*

"To the precepts and sanctions of the law I join the rights which are derived from the practice of it.

"In the other courts of this kingdom, their criminal process is limited in its duration by express and positive regulations. On this high court, charged with other various and important duties, the wisdom of our ancestors has imposed no restraint but the rule of honour, and to that honour I make this my last appeal, humbly praying that, if, in the course of this hard and long extended trial, I have conducted myself with the most patient and respectful submission, and borne all the aggravating circumstances of it with a tranquillity of mind which nothing but a consciousness of integrity and an equal reliance on your ultimate justice could have supported, I may obtain from your Lordships this only grace—that your Lordships will order the trial, now past its legal process, to continue to its final conclusion during the present session."†

Observations of Mr. Burke and Mr. Fox.

Both Mr. Burke and Mr. Fox remarked on the reflections on the conduct of the Managers contained in this address; and solemnly denied that the protraction of the trial could be justly attributed to them, or that they at all desired any further delay in the proceedings. Their Lordships then adjourned to their chamber.

Efforts of the Managers to defer their reply.

The further prosecution of the trial was adjourned by the Peers to the following Wednesday, the 6th of June;

* From a scheme, printed in the "History of the Trial," of the changes which had taken place in the Peerage since the commencement of the impeachment, it appears that as many as 58 had died; 8 of the Scottish Peers were changed; and 15 new Peers had been created.—Part V., p. 69.

† Gurney's Report, MS.—"History of the Trial;" Part VI., p. 66.

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but, on their message to this effect being communicated to the House of Commons, Mr. Burke rose and objected to the day fixed, as being too early to enable the Managers to prepare their reply to the Defence. He proceeded to complain of the efforts of Mr. Hastings to excite by addresses to the Lords an indignation against the House of Commons. He then referred to the expressions used by the Archbishop of York, during the proceedings on the 25th of May, and, challenging an inquiry into the conduct of the Managers during the trial, he proposed an investigation by a committee of the whole House. Mr. Pitt recommended the substitution of a select committee for the proposed committee of the whole House; and, after observations by Mr. Fox, in support of Mr. Burke's complaint of the unjust insinuations thrown upon the Managers, a select committee was agreed to and at once nominated.

Motion of Mr. Burke in the House of Commons for inquiry into the conduct of the Managers.

Nomination of a select committee.

Mr. Baker then drew the attention of the House to what he termed a gross libel, published in the "World" of the preceding day, and in which a charge of the most scandalous nature against the Managers had been inserted. He alluded to the publication of the observations of the Archbishop of York, published by the periodical referred to. On representation being made by a member of the House that the Archbishop was at that time in severe affliction from the death of his daughter, Mr. Baker waived his motion for the present; although Mr. Burke pressed the prosecution of the publisher of the paper.

Libel in "the World."

On the following day, the 29th of May, a deputation from the Commons appeared at the bar of the House of Lords, to state that, as the evidence on the trial of Mr. Hastings was very voluminous, the Managers were compelled to demand a later adjournment of the proceedings, in order to prepare their reply. On the motion of Earl Stanhope, the Lords appointed the 10th of June for resuming the trial.

Deputation from the House of Commons to request the Lords to postpone the trial.

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Report of Committee on the state of the impeachment.

On the following day, the 30th of May, Mr. Townsend brought up the report of the committee appointed by the House of Commons to examine into the state of the impeachment. The report having been read, a motion was made to desire the Lords to allow the Managers a further delay in making their reply. After a statement by Mr. Fox, in justification of the conduct of the impeachment by the Managers, and in explanation of the causes of the protraction of the trial, the motion was agreed to by a vote of 87 against 42.

Vote for requiring further postponement of the trial.

Motion of Mr. Burke for a report from the Managers on the state of the impeachment.

But a simple resolution on the part of the House of Commons to request the Lords to postpone the proceedings was not alone satisfactory to Mr. Burke. He was still intent on inducing the House to identify itself with the character of the Managers, and to vindicate them from reflections made both in Westminster Hall and elsewhere on their conduct of the prosecution. He moved therefore "that the Managers be required to prepare and lay before the House the state of the proceedings in the trial of Warren Hastings, Esq., to relate the circumstances attending it, and to give their opinion and make observations on the same, in explanation of those circumstances." Although urged by both Mr. Dundas and Mr. Pitt to withdraw his motion, as calculated to embroil the House with the Lords, but who at the same time promised their support if he persisted in a division, Mr. Burke declined to follow their recommendation, and his motion was overruled by a vote of 71 against 67.

Vote for desiring the Lords to postpone the trial.

On the 6th of June, Mr. Grey declared in the House his inability to execute the duty of replying to the Defence on the first Charge, on the day appointed by the Lords, and moved that they be desired to postpone further proceedings in the trial until the next session. Notwithstanding that the motion was supported by Mr. Dundas, it was defeated by a majority of five. On the following day, however, Mr. Grey again protested his want of readiness to

undertake the reply on the first Charge. He offered his resignation as a Manager; and desired to be guided by instructions from the House. On the motion of Mr. Dundas, it was agreed by a considerable majority to request the Lords to put off the proceedings till a further day. 1793.

On the 10th of June, a petition in the following terms was presented by Lord Rawdon to the House of Lords, on the part of Mr. Hastings:—

Petition of Mr. Hastings to the House of Lords, 10th June, 1793.

"That your Petitioner has been informed, with equal surprise and concern, that a message has been presented to your Lordships' House, desiring further time beyond the day already appointed for the reply to the Defence made by your Petitioner to the impeachment now depending against him.

"That your Petitioner cannot but regard the further adjournment, now required on the part of his prosecutors, as derogatory to those rights which belong to him, in common with every subject of this realm; peculiarly injurious in this late stage of his long-depending trial; as warranted by no one precedent or example to be found in the records of Parliament, by no analogy to be drawn from the proceedings in other courts of criminal judicature, nor by any grounds of reason or justice applicable to the case now before your Lordships.

"That your Petitioner humbly conceives that the time first allotted by your Lordships was fully adequate to every purpose of just and reasonable preparation, supposing, what your Petitioner is bound to believe, a due and proper attention to have been given by the Managers appointed by the House of Commons to the conduct of their own prosecution, and fit and becoming diligence to have been employed, in order to have been in a condition to reply at the time appointed.

"Eight years have now elapsed since the accusation was first preferred against your Petitioner, and it is now the sixth year since the commencement of the present trial; your Petitioner therefore apprehends he may be permitted to observe, that, in a case where so much of his life has been already consumed in a court of criminal justice, and so little remains, according to every reasonable probability, each unnecessary moment of delay produces to him a deep and perhaps an irremediable injury, which, instead of receiving any palliation from the peculiar circumstances of the case, is, on the contrary, aggravated by them in the highest degree.

"After eight years of depending accusation and six years of continued trial, your Petitioner humbly apprehends that, on a general view of the subject, it can scarcely be supposed that those who originally framed the Articles of accusation, and have since conducted the trial, can be otherwise than intimately acquainted with all the transactions which form the

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Petition of Mr. Hastings to the House of Lords, 10th June, 1793.

substance of it; and, however much the slow progress of the inquiry may have operated to the prejudice of your Petitioner, it must at least have contributed, by a gradual development of the case, to render every part of it more distinctly and thoroughly understood, and consequently the Prosecutors better prepared to reply, than could have happened under different circumstances.

"But your Petitioner further begs leave to represent that, besides these reasons which operate against further delay in the present stage of a trial of such unparalleled duration, the nature of the evidence furnishes additional objections, the great bulk of the written testimony being drawn from sources equally accessible to both parties, namely, the records of the East India Company; and, consequently, those parts on which your Petitioner relies for his Defence having been equally known to the Honourable Managers, before they were produced in evidence by your Petitioner, with those parts on which the Managers have relied in support of the prosecution.

"Your Petitioner ventures to affirm, and for the truth of the assertion he appeals to your Lordships' proceedings, that the written evidence produced from his own exclusive custody is confined within a very small compass, and occupies but a very few pages of your Lordships' printed Minutes; that the evidence of many, if not of most, of the witnesses called on the part of your Petitioner, was in a great measure known to the honourable Managers several years ago, some of them having been examined at the bar of the House of Commons before the Articles of impeachment were exhibited against your Petitioner; many by their own committee; and the depositions of others of them, relative to the matters concerning which they have been since orally examined at your Lordships' bar, having been long since printed and given in evidence by the Managers themselves, in the course of the trial.

"That your Petitioner begs leave to state, that the evidence given in support of the Defence, however extensive it may be at the present moment, was not brought forward nor delivered at one time and in one mass, but in distinct and different parts, and increased by gradual accumulation to its present state; and your Petitioner, therefore, submits that the Managers, in this respect, have had a very considerable portion of time to examine such evidence. That, in particular, the evidence relating to the first Article of Charge adduced by your Petitioner, was printed and delivered on the 11th of June, in the year 1792; that given on the second Article was in like manner printed and delivered, part on the 12th of April, part on the 18th of the same month, and part on the 6th of May in the present year; and, all the testimony on the remaining Charges having been delivered by the 7th of June last, your Petitioner feels himself utterly at a loss to comprehend with what colour of right the prosecutors, who have been for so long a time in possession of so great a part of the evidence, particularly

after a lapse of twelve days of allowed preparation for reply, since the final close of your Petitioner's Defence, can yet claim further time for the purpose of such preparation; since it appears from the preceding statement, that the evidence on the Defence of the first Article has been in their hands a complete twelvemonth, and the next will have been in their possession, according to the most probable computation, when they shall come to reply to it, upwards of twenty days, which is a term exceeding the duration of any one criminal trial of this kingdom, of allowed legality, even in its whole process.

1793. — Petition of Mr. Hastings to the House of Lords, 10th June, 1793.

"That your Petitioner further begs leave to represent, that he has himself been constantly ready and attendant upon the trial during the whole of its progress, nor has he ever, in a single instance, solicited a moment's delay; that he has, on the contrary, alone and without the aid of any co-operating application on the part of his prosecutors, presented his humble but repeated petition for its acceleration; and, under these circumstances, he has taught himself confidently to expect that an address of an opposite nature could not possibly have been prepared on the part of the prosecution.

"That your Petitioner feels this application the more peculiarly injurious to him, as, in order to expedite the close of the trial, he has waived his right to the observations of his Counsel in summing up the evidence on the 6th, part of the 7th and 14th, Articles of the impeachment, and both the opening and the summing up on the Charge of Contracts; and this under the declared expectation, which he trusts was not unreasonable, that the reply would be thereby closed in the course of the present session.

"If, however, contrary to the usage and practice which has obtained in every former instance of Parliamentary impeachment, and in repugnance to what your Petitioner conceives to be the established principle of criminal jurisprudence, the Managers of the present Charges shall continue to require further time for the purpose of their reply, and shall persist in deeming the several long and unexampled intervals of preparation which your Petitioner has stated still insufficient to enable them fitly to execute the remainder of that duty which may be expected at their hands, and your Lordships, in deference to the urgency of such representations, shall, contrary to the earnest solicitations of your Petitioner, incline to grant them a further portion of time for this purpose, your Petitioner hopes that, in any event, such indulgence may be limited to a very early day, and that the Managers may then be required to proceed with uninterrupted dispatch during a course of daily and continued sittings, till the reply upon all the subjects of this impeachment shall be fully and finally concluded in the course of the present session of Parliament."

After the reading of this petition, a debate ensued on the request for further delay sent up from the Commons, in pur-

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Adjournment of proceedings to the following Session.

suance of their vote of the 7th of June. Earl Stanhope moved that the trial be resumed on the following Wednesday, the 12th of the month; and Lord Abingdon moved to postpone it to the first day of the meeting of Parliament after the prorogation, and that it then be prosecuted to a close within the session. But, on his Lordship agreeing to withdraw his motion, an amendment proposed by Lord Grenville to Earl Stanhope's motion, that the trial be resumed on the second Tuesday in the next session of Parliament, was carried by a vote of 48 to 21. The reply of the Managers, therefore, was thus deferred to the year 1794.

The speeches in the present volume have been printed from copies of Gurney's Reports in the hands of the Editor, collated with those preserved in the library of Lincoln's Inn. The following statement will show to what Reports in any other form he has had access.

I. *Dallas' Opening of the Evidence in Defence on the First Article of the Charge, on the* 9*th*, 11*th and* 12*th, of June*, 1792. Gurney's Report. A copy, made for the use of Mr. Hastings' solicitor, is in the British Museum, Additional MS., 1,79.

II. *Law's Opening of the Defence on the Second Article of the Charge, on the* 15*th and* 19*th of February*, 1793. 1. Gurney's Report. 2. An independent Report, made for Mr. Hastings' solicitor, and preserved in the British Museum, Additional MS., 17,080.

III. *Plumer's Summing of the Evidence in Defence on the Second Article of the Charge, on the* 25*th and* 30*th of April, and the* 2*nd and* 6*th of May*, 1793. Gurney's Report. A copy, made for the use of Mr. Hastings' solicitor, is in the British Museum, Additional MS., 17,081.

IV. *Dallas' Opening of the Evidence in Defence on the Sixth, Seventh and Fourteenth, Articles of the Charge, on the* 9*th*, 16*th*, 17*th and* 24*th, of May*, 1793. Gurney's Report. A copy of the same, with a few corrections apparently by Mr. Dallas himself, and with occasional corrections and more numerous notes by another hand*, is in the British Museum, Additional MS., 17,082.

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* The writer of the notes appears to identify himself with the author of an anonymous pamphlet, intitled "Remarks on Mr. Fox's Speech in Reply on the Article of Presents, on the Trial of Warren Hastings," London, Owen, 8vo., 1794. See Add. MS. 17,082, 17th May, f. 45 b.

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SPEECHES

IN THE

TRIAL OF WARREN HASTINGS, ESQ.

SPEECH OF ROBERT DALLAS, ESQ., COUNSEL FOR MR. HASTINGS, IN SUMMING UP THE EVIDENCE IN DEFENCE UPON THE FIRST ARTICLE OF THE CHARGE, RELATING TO BENARES; 9th JUNE, 1792.

9 JUNE 1792.

MY LORDS, the whole of the evidence being now before your Lordships with which it is thought fit to trouble you in support of the Defence to this Article of the impeachment, it becomes my duty to recapitulate that evidence, and to make such observations upon the whole of the case, considered under all its circumstances as they are now in evidence upon both sides, as the nature of it seems to me to require. And, my Lords, though I cannot but feel that I have a task to discharge which far exceeds any powers that I possess, yet I, certainly, enter upon the attempt with at least diminished apprehension when I consider the full and powerful discussion which every part of this case has already received. To my learned friend who preceded me I should deem it to be injustice—to your Lordships I should feel it to be disrespect—if, after all the examination this subject has already undergone, I were at this moment to consider it as if new and as if never examined before.

Particulars of the case explained in the opening

My, Lords, in opening the Defence—in stating and applying the evidence in support of it—in commenting upon the Charge and the evidence in support of the Charge—in giving

9 June 1792. of the Defence. the first answer to the many observations made by the several and honourable persons who have conducted the accusation—it became necessary to enter into a full explanation of every particular of the case; and, fortunately for the cause—I hope I may say, for I trust it has already appeared, the cause of justice—the task fell to him who has shown himself to be fully adequate to it. But, my Lords, the effort which a sense of that necessity produced on the part of my learned friend has prepared a very different state of things for me, and would certainly leave me without any apology whatever if I were—at least, intentionally—to consume even a single moment of your Lordships' time beyond what I conceive the subject requires. My Lords, it certainly, therefore, shall be my endeavour, as undoubtedly I feel it to be my duty, to occupy no more of your Lordships' time than seems to me absolutely and unavoidably necessary, considering the complication of this Charge, the variety of subjects it involves, the extent of evidence upon both sides, and, above all, the extreme importance of it to the fame and character of the party who is accused.

My Lords, intimately acquainted as your Lordships now are with every part of this case, I may safely observe, without, perhaps, relying upon it merely as my own observation, but trusting to that experience and knowledge of the subject which your Lordships possess, from the profound attention that you have given to the investigation of it, The grounds upon which the case rests. [that although] the several parts of this case differ extremely from each other in point of materiality, though composed of an almost endless variety of particulars, on a few great grounds, after all, it must rest. And, perhaps, one, and not the least, of the many advantages which have attended the examination the subject has already undergone has been, to enable your Lordships to ascertain what those grounds are. With respect, therefore, to those parts of the case which required rather to be explained than to be discussed, with regard to others which, having been once already discussed are not of sufficient consequence to be argued again, I shall leave them as they now stand upon the examination the subject has already undergone; endeavouring throughout, in what I mean to submit to your Lordships, to select, as far as I am able to do it, the great and striking facts by which, after all, your Lordships' judgment must be decided upon the occasion. Under this explanation, I trust, therefore, it will not be considered by your Lordships, nor said by the

honourable Managers, that I shrink from the examination of any part of this case, if I do not enter into a second discussion of topics which I conceive to have been already sufficiently examined. 9 June 1792.

My Lords, with this explanation, as the earliest proof I can give to your Lordships of my sincere disposition not unnecessarily to waste a single moment of your Lordships' time, I shall, without any further preliminary observation, come immediately to the Charge itself.

Bulwant Sing not a zamindar.

The Charge begins with stating that Bulwant Sing, whom it alleges to have been a great chief or zamindar, did, in the year 1764, in the commencement of the British power in India, attach himself to the British nation, and was, in the opinion of the court of Directors, of signal service to their affairs. The answer denies that he was a zamindar, or that he was a chief in any sense of the word which imports independent and sovereign power; but it admits that the court of Directors did express such an opinion as the Charge states.

Proved to have been merely a collector.

With respect to the first fact, it is alleged that in the year 1764 Bulwant Sing was a zamindar. It seems only necessary to refer your Lordships generally to the evidence that has been given by us to prove the contrary, and from which I apprehend it will most clearly appear that at that time he was a collector only. The evidence to which I particularly allude will be found in the introductory part of that which was given by us, in page 1467 of your Lordships' Minutes. I allude to a minute signed by Lord Cornwallis and Mr. Shore, in which it is stated that it appears that many zamindars were dispossessed by Bulwant Sing, when he was employed as Amil of Benares, under the father of the late Suja-ud-Dowla. There is also other evidence which goes to the same point; but I do not trouble your Lordships with hearing the particulars of it, because I perfectly agree with an honourable Manager, whom I do not now see in his place, that it is of very little importance with respect to the present Charge whether Bulwant Sing was the one or the other.

Concession of the point of his having been a zamindary, in 1764.

And, to show how cordially I do agree with him upon that subject, I am extremely willing to abandon even the ground that we have made by our own evidence, and, instead of considering him as a collector at that period of time, I am willing that your Lordships shall understand him to be that which he is described in the Charge—a zamindar of certain provinces called Benares and Ghazipore, dependent upon the Mogul empire through Suja-ud-Dowla, and, consequently,

9 JUNE 1792. in the first instance dependent upon Suja-ud-Dowla himself. This fact, therefore, I will beg your Lordships to bear in mind, that, at the moment the Charge sets out with describing Bulwant Sing in 1764, it states him to be a zamindar and nothing more; and, further, to be a zamindar at that time dependent upon Suja-ud-Dowla.

Assertion that he was attached to the English.

With respect to the next allegation—that at that period of time he attached himself to the English nation, and was, in the opinion of the court of Directors, of signal service to their affairs—it seems that this is not to be considered, like many others in the Charge, as an allegation introductory or historical only, but by the honourable Manager who opened the case it is expressly stated as constituting matter of aggravation, inasmuch, as, according to him, the services the father rendered to us ought to have secured a different treatment to the son; or, to express it differently, I understood the honourable Manager to contend that the conduct of Mr. Hastings in this instance was injustice aggravated by ingratitude.

Considered in the light in which the honourable Manager has thought fit to apply this fact—as matter of aggravation—I, certainly, shall not think it necessary to make it the subject of even a single remark; for it seems to me that it would be absolutely inconsistent with my purpose, denying guilt altogether—nay, proudly asserting merit—to enter into an examination of circumstances which suppose guilt, and are only urged to ascertain the degree of it. To the purpose, therefore, to which that fact was applied by the honourable Manager, I shall pass it over without even a single observation; and, if I trouble your Lordships with merely a few remarks upon the subject, it is for a purpose entirely different, namely, because I conceive that it tends to throw a strong light upon the subsequent connection between Cheyt Sing and the Company, by tracing it up to the original source in the year 1764.

Pursuing the subject with this view only, the first mention that occurs of Bulwant Sing is in a letter written by Major Carnac, and addressed to the President and Council on the 29th of March, 1764, and which appears in the 10th page of the Evidence. In that letter, Major Carnac informs the President and Council that a treaty of alliance has been some time in agitation between Bulwant Sing, the Raja of Benares, and the Nawab of Bengal; that the latter is extremely desirous that it should be brought to a conclu-

Refusal of Bulwant Sing to treat with the Nawab, except under the British guarantee.

sion; but that the former—that is, Bulwant Sing—refuses to set his seal to it unless it is confirmed upon the part of the English. On the receipt of this letter from Major Carnac, who then, as your Lordships know, had the command of the English forces in the war that had taken place between them and Suja-ud-Dowla, the President and Council came to this resolution—that, as Suja-ud-Dowla had openly professed his intention of invading Bengal, it would be extremely proper to make all the enemies against him they possibly could; and, for this purpose, they authorise Major Carnac to enter into the proposed treaty to maintain Bulwant Sing independent, both now and hereafter.

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His independence guaranteed.

I would also beg leave to point out to your Lordships, that, at this time, there can be no doubt whatever that the sort of independence that was to be conferred upon Bulwant Sing was entirely different from that which was afterwards bestowed upon Cheyt Sing, when Benares came under the dominion of the Company; for, undoubtedly, here it was to make him independent, in the most comprehensive sense of the word, to erect him into a sovereign and an independent prince. The consideration, however, for this treaty and for the guarantee on the part of the English was, that Bulwant Sing should give us all possible assistance in the war in which we were then engaged.

The independence of Bulwant Sing absolute.

But your Lordships will find, by referring to the evidence, that, very shortly after this—within a month or six weeks—a second letter was received from Major Carnac, in which he apprises the Board of this singular fact—a fact not at all produced by the honourable Managers, in the evidence which they thought fit to lay before your Lordships;—in that second letter, he states that the proposed alliance between the Nawab and Bulwant Sing was, upon the part of Bulwant Sing, a stratagem, and nothing more, to draw the English further up the country, or, in other words, to put them into a situation in which, according to his judgment of things, the army might be cut off and the British power utterly exterminated from India. This was the earliest proof of the attachment which Bulwant Sing showed to the English nation, and this the first signal service which he endeavoured to render to their affairs!

Treachery of Bulwant Sing.

My Lords, it appears, however, that the President and Council of that day did not deem precisely in the same manner of those intended services with the persons who framed the present Charge; for, so far from thinking that

9 June 1792. they were such as to intitle him to the gratitude of the British nation, your Lordships will find that they wrote a second letter to Major Munro, in which they directed him, that, if at that time Bulwant Sing had not been received back upon the faith of promises, he should be dispossessed of his zamindary, and his person should be, if possible, secured. From an event which had happened in the intermediate time, that became, however, impossible.

Order of the Council to arrest him.

Your Lordships know that, upon the 23rd of October, in the year 1764, the battle took place between Suja-ud-Dowla, at the head of, I believe, 50,000 men, and the present Sir Hector Munro, who then commanded the English forces, to the number of 7,000 or 8,000—of whom, I believe, not above a thousand were Europeans—the event of which was completely glorious to our army; and your Lordships find the letter written the very day after by Sir Hector Munro to the President and Council at that time, giving an account of the battle, is dated—"Camp at Benares"; so that, at that time, Sir Hector Munro had acquired by right of conquest the possession of the country of Benares on the part of the English nation.

Terms made by him with Sir Hector Munro.

Dispossessed of his capital and driven from his country, Bulwant Sing now began to consider what proof of attachment he could give to his own affairs, and what signal service he could render to himself; and, accordingly, on the day after, he sent proposals to Sir Hector Munro, in which he stated that, if he could be received by him, he was willing to hold the country of us in the same manner that he had before held it of Suja-ud-Dowla. In consequence of this proposal, your Lordships may recollect that he was received back by Sir Hector Munro; the reason for which measure he states in a letter written to the President and Council to be this—that at that time Bulwant Sing was at the head of 15,000 or 20,000 horse in his rear, and therefore that, though he had no great confidence in any of his promises, yet, as he might obstruct his intended future operations, he thought it best to receive him back upon the faith of the promises he made.

Further perfidy of Bulwant Sing.

This, then, was the manner in which the first connection, such as it was, originated between Bulwant Sing and the English nation. But your Lordships will find that the conduct of this man was, if possible, still more perfidious even after this event than before; for, in the spring of the following year, when our affairs were in a critical state, and

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a general engagement was likely to take place between us and Suja-ud-Dowla, intelligence is again sent by Major Carnac to the President and Council, stating that Bulwant Sing, notwithstanding this agreement, had eloped from the English army. My Lords, fortune, which at that time promised favourably to our affairs, soon brought him back, he having shrewdness enough to discover that it was more for his interest to return than to continue that elopement. But your Lordships will find that the whole of the sentiments of the President and Council of that day is clearly and very distinctly summed up, after all the transactions I have stated, in a consultation dated the 1st of April, 1765,—to be found in page 1470 of your Lordships' printed Minutes—and in which, speaking of the conduct of Bulwant Sing, the man whom the honourable Managers have thought fit to place in the front, in this Charge, as deserving the gratitude of the English nation, they describe him in this way:—

The Council's opinion of him.

"This man acted from the first so wavering a part that we expressed in our instructions to Major Munro, after the battle of Buxar, our wish to have no manner of connection with him, but rather that his person should be secured and some other placed in his zemindary who was more to be relied on."

My Lords, such were the sentiments in the year 1765, while all these transactions were recent, of the President and Council of that time. Whether or not the conduct of this man was such as to intitle him to the gratitude of the English nation, I now leave it to your Lordships, upon the fair construction of these facts, to decide. Let it not, however, be supposed that, in pointing out the conduct of Bulwant Sing, I mean on that ground to justify any severities whatever that were afterwards shown to Cheyt Sing; on the contrary, I have no difficulty to state that, if your Lordships, in considering the whole of his conduct, can fairly discover any services that intitled Bulwant Sing to the gratitude of the English nation, let them be remembered in favour of his son; if he did us any injuries, let them be forgotten. Let the conduct of Cheyt Sing stand upon its own ground; let him be fairly tried by his own merits. And, on the other hand, surely it is no unreasonable request that the conduct of Mr. Hastings also may be fairly tried, and the facts may not be misstated, in the very outset of the Charge, for the purpose of exciting a prejudice against him, leading to a perversion of one of the noblest feelings of the human mind.

The misdeeds of Bulwant Sing not to be visited upon his son.

Your Lordships know that, Bulwant Sing having thus

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Stipulations made with Suja-ud-Dowla for the security of Bulwant Sing.

deserted his own sovereign and joined the British nation, upon consideration of having those possessions restored to him which then became ours by right of conquest, when a peace afterwards took place between us and Suja-ud-Dowla, it was necessary to introduce proper articles into the treaty of Allahabad, in order to secure him against the resentment of that sovereign whose cause he had betrayed; and, accordingly, your Lordships will find that, by one of the articles of that treaty, Suja-ud-Dowla engaged in the most solemn manner to the English nation, to continue Bulwant Sing in possession, on condition of his paying the same revenue as before.

Death of Bulwant Sing, in 1770.

In possession of Benares under the treaty of Allahabad, Bulwant Sing continued in possession down to the time of his death, which happened in the year 1770, and of which an account is given in a letter written by the President and Council to the court of Directors, dated the 11th of September, 1770, and to some of the facts contained in which letter it may not be altogether immaterial for your Lordships to attend.

Importance of retaining the zamindary in his family.

My Lords, in this letter, after having stated the circumstances of his illness, the President and Council say,—

"In our former letter, we expressed our sentiments of the consequence it was to our affairs that the zemindary of Benares should continue in the family, but that it was a delicate point to accomplish with the Vizier. [A regard to your interest has long made it our wish, but the doubtful conduct of the Vizier has for some time made it an unseasonable measure. The occasion, however, now demanded immediate despatch, and the President was requested to write to the Vizier accordingly in favour of the son of the late Rajah, in terms that would least awaken his jealousy. The time has been, gentlemen, when this might have been made a demand, but circumstances are now changed, and even address is necessary to solicit. A jealous, suspicious, disposition of the old Rajah, assisted by a distrust of their own children, inherent in the minds of the people of this country, may possibly have been the reason why the son was not included in the treaty of 1765; for, had he expressed a wish to secure the zemindary in his own family at a time when the Vizier was receiving back his country from our hands, a doubt can scarcely be found, but it would have been attended with success. But, suspicious probably of consequences, that his son should think he had a right to the succession, and equally fearing that the measure might be attended with a considerable reduction to his treasures from the usual presents made on such occasions, his whole aim seemed to centre in self-security, without the least attention to the good of his posterity. Indeed, it would appear, at a time when lately his life was despaired of, this thought first struck him, and he was desirous then to engage our interests, and appeared no way backward to satisfy the Vizier as to any pecuniary present] that might be expected of him."*

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* Printed in the "Minutes of the Evidence," p. 1471.

From these papers these two facts clearly appear:—first, that, in the opinion of Bulwant Sing, of the President and Council at that time, and of Suja-ud-Dowla, who were the three parties to the treaty of Allahabad, Cheyt Sing had no right whatever to succeed under that treaty: secondly, that in point of fact he would not have succeeded, but owing to the interposition of the British Government, or, as the Charge states, through their influence.

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Cheyt Sing possessed of no right of succession under the treaty of Allahabad. Is appointed through British influence.

My Lords, to show in what manner Cheyt Sing himself felt upon the occasion, it is only necessary to refer your Lordships to that letter which is given in evidence in page 1472, and in which, with all the exaggerations of eastern phraseology, he states that "if every hair upon his head were a tongue, he should not be able to express the gratitude he felt." In what manner he afterwards endeavoured to evince by his conduct this gratitude, which tongues not to be numbered would yet have been too few to express, my Lords, the sequel shall show. But, putting aside the exaggerated professions of this man, who seems never to have made any profession but for the purpose of deceiving, and having recourse to the fact itself, thus much at least I am warranted to state—that, if services rendered or benefits conferred can intitle to the returns of gratitude, the conduct of the East India Company towards Cheyt Sing had been such as to give them this claim in the highest degree. Not, however, that I mean to rest any part of the public rights upon so slender a foundation. The dues of gratitude are not a debt than can be claimed, they are a payment that must be voluntary, the cheerful offering of a willing heart. Let it not, therefore, be supposed that I mean to contend that the Company possessed any one right with respect to this man which they did not otherwise derive, either from the relation in which he was placed or as the consequence of an express agreement.

What was the tenure of Cheyt Sing?—what the duties that resulted from that tenure?—what the different agreements, that had taken place between him and his former sovereigns, binding upon us at the moment of the transfer?—what the explanation of rights that took place at that moment? These, I admit, are the true questions in the cause, and not the degree of gratitude that he was bound to feel. But thus much I may safely say, upon the best authority—the Charge itself—with respect to this honourable gentleman, that, with respect to any established breach of any legal or political obligation, being in itself the

Nature of Cheyt Sing's tenure.

9 June 1792. substantive offence, it becomes a high aggravation that the party guilty of it was bound in point of gratitude to have pursued a different line of conduct. I say this upon the authority of the Charge, which sets out with stating the supposed services of Bulwant Sing in 1764, stated by the honourable Manager who opened the case to be for no other purpose than to aggravate the guilt of Mr. Hastings in the supposed breach of agreements.

But I say this—and say it too for the honour of the British nation, materially concerned in the conduct of those who are its representatives both at home and abroad—that, in the case both of Bulwant Sing and Cheyt Sing, the conduct of the British nation had been such as to call for demands of gratitude. Owing then, as the Charge expressly admits, to the influence of the British Government in Bengal, and owing to no other cause, Cheyt Sing, upon the death of his father in 1770, succeeded to his possessions, and but for that influence your Lordships never would have heard of the transactions of the present Charge.

My Lords, he succeeded in consequence of the influence of the British Government and of the payment of a considerable sum of money, which was settled in the result of a negotiation by Colonel Harper, upon the part of the English Government, interfering with the Wazir in favour of Cheyt Sing, and which appears in evidence before your Lordships. This happened in the year 1770; and, from that time down to the year 1773, I am not sure that there is anything material appearing upon your Lordships' Minutes, on either side, with respect to the conduct and situation of this man. But it appears that, in the year 1773, Mr. Hastings, who was then going up to Benares for other purposes, was empowered, upon some doubts that had occurred with respect to the intentions of the Wazir, to confirm, in behalf of Cheyt Sing, the sanad which had been granted by the Wazir, upon the death of his father; and, accordingly, in the year 1773, a confirmatory sanad was obtained from the Wazir, in which he stipulated that, exclusive of the jama therein expressed, no increase should ever afterwards be demanded. And Mr. Hastings at that time gave a paper to the Raja, in which he stated, on the part of the English Government, that, so long as he continued punctual in the payments of his rents, and paid due obedience to his superior lord and sovereign, they would take care of his interest as their own.

Interposition of Mr. Hastings in favour of Cheyt Sing.

Up to this period of time, your Lordships perceive that there is not an attempt in any respect to criminate the

conduct of Mr. Hastings, but, on the contrary, all is praise, all is panegyric. It was necessary that there should be a confirmation of the rights of Cheyt Sing, because he was in danger from the supposed conduct of his superior, Suja-ud-Dowla. That was obtained by Mr. Hastings; and afterwards, in the year 1775, when the Wazir, in contradiction to the terms of this agreement, attempted to take the rents in advance, the British Government a second time interposed, prevented this breach of treaty, and supported and maintained him in the rights that he enjoyed.

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Second interposition of Mr. Hastings.

Thus everything continued down to the year 1775, when an event happened of considerable consequence, and which immediately led to two of the most material transactions which are the subjects of the present Charge. Your Lordships undoubtedly perceive that I allude to the death of Suja-ud-Dowla, which happened some time in the beginning of the year 1775: the circumstances that relate to it appear upon the consultations of the 13th of February of that year. At the time of the death of Suja-ud-Dowla, there were two treaties in existence between him and the East India Company; the one being the treaty of Allahabad, of which I have now been speaking, and the other being the treaty of Benares, in some respects explanatory of that treaty, and in others introducing new articles. Both these treaties purported to be between Suja-ud-Dowla and his heirs—the words "his heirs" standing in the front of the treaty—and the East India Company. It, however, happened, for reasons which it is unnecessary for me to state, because they are not connected with the present Charge, that, upon the 13th of February, 1775, at a consultation that was then held, the question was put whether or not the treaties which had been made with Suja-ud-Dowla continued in force or expired with him; and, upon that occasion, General Clavering, Colonel Monson and Mr. Francis, held that the treaties expired with him. Mr. Hastings and Mr. Barwell were of a contrary opinion. Being, therefore, in a minority, the resolution of the Board was, that these treaties were at an end. No sooner was this vote passed than the question was put, whether they ought not to enter into a new treaty; and, in considering this question, Mr. Francis proposed, as one of the articles of this new treaty, that the Nawab, Asoff-ud-Dowla, should transfer to the Company the zamindary of Benares, together with all the rights and privileges belonging to it.

Treaties of Allahabad and Benares.

Remodelling of the treaties.

There was upon this subject, as upon the former, variety

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Benares ceded to the British

of opinion; but, however, it ended in a proposal being made by the Governor and Council to the Nawab for the purpose, and in a full consent on his part to transfer by treaty the sovereignty of Benares to us; which sovereignty, therefore, we acquired about the month of May, in the year 1775, together with all the rights and privileges belonging to it. And the Charge states that, notwithstanding this transfer, the nature and condition of the Raja continued the same as before;—a proposition which upon many grounds I might dispute if I were inclined to do it, but which I conceive however not to be necessary, because all I mean to contend is this, that by that transfer of the sovereignty—and thus much, at least, the Charge admits—we derived all the rights and privileges which the former sovereign enjoyed, and every duty which Cheyt Sing owed to that former sovereign, according to the true spirit of the Mogul constitution, from that instant he owed, precisely in the same degree, to the British nation.

Transfer of allegiance of Cheyt Sing.

What, then, in general were these rights of sovereignty which we acquired by the transfer of it in the year 1775? And upon this subject it seems to me not to be necessary to follow the honourable gentleman who opened, or ought to have opened, these Articles of impeachment through the long and, no doubt, eloquent discussion into which he thought fit to enter upon the subject of arbitrary power; denying that, in fact, such can be the principle of any government whatever, and asserting that, if the traces of it are anywhere to be found, they are to be considered as tyranny and usurpation, and nothing more.* I say it is perfectly unnecessary to enter into any examination of this doctrine with reference to the present subject, and for this reason—that, whatever may be the peculiar form of any particular government, whether in the hands of all, of many or of one, whether arbitrary or whether limited, all government must ultimately depend upon the same common principle—that power is not a gift for the benefit of an individual, but a trust for the public good; and, therefore, any perversion of the means which are intrusted for the end of government from that end for which they are intrusted, namely, the preservation of the just rights of every individual, is equally a violation of the principle of government, let the form of it be what it may.

My Lords, there can be no such thing as a right to govern

* See Speech of Mr. Burke, 16th Feb., 1788; printed in vol. i., p. 79.

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contrary to justice. Whatever, therefore, was the real nature of the Mogul constitution, whatever the powers which, according to the true spirit of it, belonged to the sovereign as the head of that empire, and which in consequence of the transfer devolved upon the British nation, and under which transfer it became the duty of Mr. Hastings in common with the other members of the Board to exert them, he was undoubtedly bound to employ them according to those great and leading principles of justice which do not grow out of any particular form of government, but are the seeds and roots from which all lawful government must spring; which, I admit, cannot change with climate or vary with situation, but are immutable and universal, prevailing wherever the relation of state to state, of sovereign to subject, or of man to man, exists.

Principles, upon which Mr. Hastings' conduct is to be tried.

Try then the conduct of Mr. Hastings by the test of these principles—the great and sacred principles of eternal and unalterable justice; not as they are to be found in the ingenious refinements of visionary minds, but those clear and luminous principles which the plain reason of every common man holds up to him as the great lights by which he is to shape an honourable course. Did Mr. Hastings, in the conduct of the important public trust committed to his charge, act honestly, uprightly, conscientiously, zealously, with a view to the public service, in moments when a sinking empire was to be saved, and without any actual or intentional violation of the rights of those over whom he was appointed to govern? This, give me leave to say, is the true question, and, disincumbered from all the matter with which it has been industriously and unfortunately loaded, it seems to me, is the only question for your Lordships to try.

Intelligence of war with France.

In the situation then of a subject dependent upon the Government of this country, Cheyt Sing continued from the year 1775 down to the year 1778; and, during all this period of time, there is no pretence whatever of any attempt upon the part of Mr. Hastings to manifest towards him the slightest act of oppression. Your Lordships know that, in the year 1778, Mr. Hastings received in India the very important intelligence that an event which had been long expected—a war between the French and the English nations—had actually taken place. My Lords, I should state that, previous to that time, he had also received intelligence from a noble Lord, who was examined upon the occasion, and who was then ambassador at the court of France, in the

9 June 1792. year 1775, that a plan had been actually formed by the Minister of France for the total overthrow of the British interests in India, and that this plan was to be carried into effect by forming an alliance with the different country powers.

On the receipt of this intelligence, into the authenticity of which I do not now inquire, because that is a subject that more properly belongs to another part of the argument—how far it was or not the duty of Mr. Hastings to act upon it—and which, therefore, I shall postpone for the present, but with respect to the authenticity of it, it will be sufficient to state that every member of the Board, as then composed, agreed with Mr. Hastings that it was their duty, such as the intelligence was, to act upon it both offensively and defensively, not only to put their own provinces into a condition of defence, but to carry the war into the heart of the enemy's country, and to strip them of what possessions they might at that time have in the East Indies—the intelligence then being deemed sufficiently authentic, not only by Mr. Hastings but the Council acting with him, of war actually having taken place, three things became necessary for their attention. First, what was the actual situation of affairs at that time in Europe, and the probable influence they would have on the affairs in India? Secondly, what was the actual state of India at that moment? Thirdly, what were the resources upon which Mr. Hastings could depend for carrying on the war; combining these three objects, considering their relative influence upon each other, and the state of things in India which was probable they would at some future time produce?

Situation of affairs.

My Lords, suffer me to ask—what prospect had Mr. Hastings before him? He could not expect that a great part of the force of this country, as if at peace with all the world, would be detached to his assistance. He could not expect that all the great powers of India, united with him in the same common cause and ranging themselves under the British standard, would pour their myriads into his camps. He could not expect that, instead of the fleets of this country bringing home to it the wealth of India, they would carry out to India the wealth of this country. No! none of these could Mr. Hastings expect. But, if he looked to the situation of this country, what was it? It had been at that time engaged for some years in an unsuccessful war with America. It was upon the point of entering into a war with France and

Spain; for that a war with Spain would be the consequence of a war with France was an event certainly to be foreseen. Such were the circumstances that led Mr. Hastings not to look for any resources from this country, but to depend, as far as he could, upon the resources of the government intrusted to his charge. 9 JUNE 1792.

What also was the situation of India? That situation your Lordships will distinctly discover from the minutes which passed upon this occasion, in which Mr. Wheler and Mr. Francis concurred with Mr. Hastings that the state of India was such, at the moment of the receipt of this intelligence, that it became necessary to act upon the probability that Bengal would be invaded. And your Lordships will find that all the measures that are proposed at that time are measures grounded upon the probability of an impending invasion of Bengal, hanging over the heart of the British possessions there.

Council called by Mr. Hastings.

Under these circumstances it was that Mr. Hastings, upon the 9th of July in the year 1778, as it was his duty to do, called a Council to take into consideration the measures to which it was necessary to have recourse upon the commencement of this war: and, upon referring to that consultation, which consists of a great number of distinct propositions, your Lordships will find that they may be classed under two general heads. The first is a series of propositions merely adapted to the internal defence of the provinces; being, therefore, measures simply and singly of defensive preparation. And, after having gone through these, Mr. Hastings then states, that it is an important consideration for the Board to decide whether the intelligence be sufficiently authentic to act offensively. That it was sufficiently authentic to make it the indispensable duty of every one to put the provinces intrusted to his charge into a state of defence no man could doubt; but he throws out the other question for the consideration of the Board, and in the result of that consideration they came to an unanimous voice that the state of affairs, such as it was, made it necessary to have recourse, not only to defensive, but to offensive measures.

Measures offensive and defensive.

Cheyt Sing required to contribute three battalions of sepoys.

I will just point out to your Lordships that, as one of the measures of defensive preparation, Mr. Hastings proposed that Raja Cheyt Sing should be required to contribute his share of the burden of the war, by consenting to the establishment of three regiments of sepoys, to be raised and maintained at his expense. I do not now mean to enter into

9 JUNE 1792. any critical consideration of the terms in which that proposition is framed; it will be sufficient for me to state that the proposition, such as it was, was assented to by the Board. Cheyt Sing was required to contribute his share of the burden of the war by consenting to the establishment of three regular battalions of sepoys, to be raised and maintained at his expense; and, he not being willing—for I admit that which the Charge states—if that can be considered as extortion, in this sense of extortion the expense of raising and maintaining those three battalions was undoubtedly wrung from him by this resolution of the Board. This happened in the year 1778, upon the first intelligence of the war. In the years 1779 and 1780, the war still continuing, the same demands were again made, except that, in the year 1780, an additional demand was also made of such cavalry as the Raja could spare; which demand is afterwards reduced to a specific number, which has been the subject of much evidence, and into which evidence I shall have occasion to go fully hereafter.

Contingent of cavalry required.

Confining, therefore, at present my attention merely to the demands that were made, they appear to have been of this sort—demands for military aid, upon the occasion of a war, from a person who stood in the relation of a subject to this country, and at a moment when the superior Government felt it necessary to act upon a probability that an invasion of their own provinces would have taken place; in which case, undoubtedly, that invasion must have fallen in the first instance upon Benares. And therefore, it results to this—that the Raja was required to contribute a number of men for the defence of Benares, Benares being a part of the British possessions.

Before I enter into any critical examination of the manner in which the Charge is framed, in order to ascertain the criminality which it imputes to these acts upon the part of Mr. Hastings, your Lordships will give me leave to state one or two preliminary facts which I conceive to be material.

Demands made in the name of the Governor General and Council.

First, I state that these demands, such as they were, though stated by the Charge to be the single and separate acts of Mr. Hastings, were not so, but were in each instance the act of the Government, consisting of a number of persons together with him; or, in other words, the demand was made in each instance under the resolution of the Governor General and Council.

The second fact that I would beg leave to state to your

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Notice sent to the Directors and Secretaries of State.

Lordships, is—that, immediately after the first demand was made, in each instance, successively, as the other demands were set up, intelligence of the fact was transferred to the court of Directors, who were apprised of it in each instance at the time it took place.

Thirdly,—I beg leave to state that, not only the court of Directors, but one of His Majesty's Secretaries of State and the Commissioners of the Treasury had also, at the time of every one of these events happening, full and complete intelligence given to them of the fact.

The appointment of Mr. Hastings as Governor General.

Fourthly,—I beg to point out that, in the year 1781, four or five years after the first of these demands was made, after full notice in each instance to those agents whom the public had appointed to receive notice on their behalf, Mr. Hastings was a fourth time re-appointed to be Governor General of Bengal, for a period of ten years, which station he voluntarily resigned upon the conclusion of the war. So that we are now at your Lordships' bar, at the distance of nearly seventeen years from the first of these demands being made, inquiring into the conduct of Mr. Hastings, who is charged as a criminal in having received these several sums for the public service, to which they were applied in times of the greatest difficulty; the public having been through their agents, as by law appointed, apprised of the fact in every one of these instances. Under these circumstances, my learned friend said that upon the grounds of faith and justice it was impossible that this Charge could proceed.

Plea of estoppel waived.

My Lords, I go further, and I will venture to maintain—pledging myself to make good that proposition hereafter—that, not merely upon grounds of faith and justice, but upon strict legal principles, I might oppose an insuperable bar—I might set up a complete legal estoppel—to this charge. But, my Lords, I do not desire to act in this way. If the Commons of Great Britain, under all these circumstances, think it consistent with the public faith and justice that, seventeen years after this fact having taken place, the conduct of Mr. Hastings shall be inquired into, I oppose no bar to the inquiry—I obtrude no estoppel. Let the facts be considered as recent, and that we are now inquiring into their merit or demerit upon the earliest intelligence that it is possible the public should have received of them.

I shall now beg leave to consider the precise terms of the Charge, in order to ascertain the specific criminality which by that Charge is imputed to these facts. And, before I enter

9 June 1792. into any consideration of the terms of the Charge, I would beg leave to state to your Lordships that I shall, in the mode which I propose to pursue in discussing this subject, keep entirely distinct and separate from each other the conduct of Mr. Hastings previous to his going to Benares, and his conduct there; because, for reasons that I will hereafter state, they seem to me in many respects to rest upon grounds entirely different.

Demands made on Cheyt Sing previously to Mr. Hastings' journey to Benares.

I am now, therefore, talking merely of the demands that were made in each of these years and the means respectively taken to enforce these demands, each of which your Lordships will perceive, upon referring to the Charge, are stated as so many distinct, separate, independent, crimes, the one not having any necessary reference to the other; and, therefore, if the Charge had left the conduct of Mr. Hastings at the moment he went up to Benares, still upon the face of this Charge he is to be considered as equally criminal, in consequence of all that preceded. To this part of the case, having marked out this division, which for the sake of distinctness I think material, I am now proceeding.

Terms of the Charge.

The Charge alleges, that, in the year 1778, Mr. Hastings, while he was Governor General, did extort from Cheyt Sing the sum of of five lacs of rupees, under pretence of providing and paying for three battalions; and it states that he did this—

> "First, in breach of his duty and of the trust reposed in him; secondly, in positive contradiction to the treaties, stipulations and engagements, which existed between the India Company and the Rajah; and thirdly, with a view to harrass, distress, and finally ruin him, in consequence of preconceived malice."

Beyond this, the Charge also states, as circumstances from which malice is to be collected, that—

> "He set up these demands under the pretence of a war, of which he had not received any authentic accounts, at a time when the public treasury was unusually full, and when no demands were made upon any person in a similar situation."

Having now stated to your Lordships in what manner this Charge, with respect to the wording of it, is framed, these facts are perfectly clear—that this Charge stands upon these two great general grounds:—first, that we had no right whatever to make the demand, and that it was so manifest a violation of all right that it leads to the necessary inference of guilt.

Imputation of malicious motive.

But, my lords, the Charge does not stop here; it goes further, and it takes upon itself to specify what is the precise nature

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of that guilt, alleging that Mr. Hastings did all this, not erroneously, but because he had entertained a purpose and formed a design to oppress, harrass, and finally ruin the Raja, in consequence of this malice entertained against him. So that your Lordships see malice and an intent to ruin this man are the ends Mr. Hasting had in view, and the means the Charge points out are the several demands which it specifies. Under these circumstances, therefore, nothing can be more clear than this, that malice is the essence of this Charge; and not malice merely in the legal sense of the word—a distinction which an honourable Manager can make when it serves to stop a question being put to a witness, but which he forgets when it serves the purpose of stating the Charge—not malice in the legal sense, that is, the ill intention which the law implies from every unjustifiable act, but malice in the common meaning of the word, as it would be understood and applied by every person who hears me—enmity to a particular individual lurking and brooding in the mind, keeping watch and lying in wait for opportunity—cold, deadly, rancour—base, black, revenge. This is the sort of malice which the Charge imputes, and upon which the honourable Managers have in their several speeches thought fit to rely, and upon which, as the ground and foundation upon which the whole and every part of this Charge must stand or fall, it will be ultimately for your Lordships to deliberate and decide. Such, then, is, in substance and effect, what this Charge pointedly and distinctly imputes to the gentleman at your bar.

The whole Council equally liable to the imputation.

But, my Lords, it does not impute it to him alone, for I undertake to prove that, if upon this evidence Mr. Hastings is to be convicted of malice, he is, indeed, one of many criminals, of whom he has not even the merit to stand supreme; for these acts, which in each instance are stated as the solitary crimes of Mr. Hastings, if they be criminal, were base and wicked conspiracies, in which together with him were concerned Mr. Wheler, Sir Eyre Coote and Mr. Francis. These were the immediate principals in the base and infamous plot which this Charge imputes. They were accessories both before and after the fact; the aiders and abettors of this foul and infamous design. Every member of the court of Directors during three successive years, some of his Majesty's Ministers for the same period of time, and the House of Commons of a subsequent day, many of your Lordships' predecessors—pardon me if I add, many

9 JUNE 1792. who are now present—and, lastly and above all, the people of Great Britain, in whose name and on whose behalf this accusation is stated to be preferred—if Mr. Hastings be guilty, these are his accomplices! His guilt must be their guilt; their innocence must be his innocence. They cannot be separated—together they shall stand or together they shall fall.

The character of the British nation involved.

I do not, therefore, appear at your Lordships' bar the advocate for Mr. Hastings alone, but my duty expanding to the scope of this wide-spreading Charge takes in the defence of all that is great and valuable in human estimation—the honour of the living—the memory of the dead—the character of all the great representative bodies in this country in whom the efficient powers of Government were then lodged, and, finally and above all, the fame and character of the British nation itself; all impeached—all struck at—all gone, if this Charge can be maintained!

My Lords, having now stated to your Lordships what I conceive distinctly to be the nature of this Charge, I will take the liberty to explain, as concisely and as clearly as I can, the course that I mean to pursue in giving an answer to it.

Question of right and of motive.

My Lords, I have already stated that the Charge stands upon two general grounds:—first, the want of right to make the demand; second, the malicious motive. Now, both these grounds must concur to the support of this Charge. Take away either and it falls immediately; for, on the one hand, if we had a right to make these demands and the acts done were lawful in themselves, it is hardly necessary for me to point out to your Lordships that an act lawful in itself cannot be criminal in respect of the motive which occasioned it. On the other hand, it is equally clear that, supposing we had no right to make the demand, yet, if the honourable Managers cannot succeed in establishing the criminal motive to which these demands are imputed, then there is an end of the other part of the case. So both these propositions must be established to support the Charge; neither of them separately will do.

Propositions in reply.

Therefore, in giving an answer to this Charge, I mean for the sake of clearness to lay down distinctly and correctly these three, several, propositions, within one or the other of which all the argument will fall with which I mean to trouble your Lordships upon this part of the case.

First, I say that, upon those general principles upon which

all governments must stand, peculiarly confirmed by the usage of the Mogul constitution according to the true spirit of that constitution, Cheyt Sing was liable to demands of the nature that were made upon him. 9 June 1792.

The second proposition I mean to state is this:—that there was nothing whatever contained in any of the agreements which passed between him and his former sovereigns, previous to the transfer of the sovereignty to the English nation, or between the English nation and him on the occasion of that transfer, which either expressly or impliedly, or by necessary or even by possible construction, put an end to that liability; but that, on the contrary, if that duty had not existed before, it would have been expressly created by those agreements.

The third proposition upon which I mean to rely is this: —that supposing, for the sake of argument, that which is utterly impossible to happen in point of fact, that the two former could not be established, then I say that, under all the circumstances of this case fairly considered, the allegation of malice upon the part of Mr. Hastings and of a deliberate intention to ruin Cheyt Sing is, as the evidence now stands, an allegation extravagant, untrue and incredible. These are the three, several, propositions upon which, separately and jointly, I mean to rely.

That Cheyt Sing was liable to the demands:

My Lords, the first proposition which, therefore, it becomes me to maintain is this, putting for the moment all agreements whatever out of the question—that, upon the general principles which constitute the foundation of all government whatever, Cheyt Sing was liable to demands of this sort. I should hardly think that it is a proposition which requires to be argued at your Lordships' bar, that all the subjects of every state, however constituted, are, in respect of their capacity of subjects, bound to contribute to the general defence of that state to which they belong. I state that as a self-evident principle. The only question is, whether it applies to the present case, or, in other words, whether the situation of Cheyt Sing in respect of anything that can be stated constitutes an exception to a principle otherwise universal. My Lords, here I might stop; for if I can show that it applied to the situation of Cheyt Sing, and if it be, as I state, incumbent upon the honourable Manager to prove his case an exception to the general principle, then I say they have not done it, and it would not be necessary for me to go further. But I will not stop here, because I think the

9 June 1792. justice of the country and the honour of Mr. Hastings demand that I should enter into the fullest examination of this question of right, and that I should show your Lordships, upon every possible ground, that Mr. Hastings would have deserved to have been impeached if he had not made the demands which are the subjects of the present Charge.

I have stated that it is the duty of every subject to contribute to the defence of the state to which he belongs. What, then, was the situation of Cheyt Sing? Was it that of a subject to this country or of an independent and sovereign prince? And here, willing to have as few causes of difference as possible with the honourable Managers, I shall again beg leave to refer to the Charge itself, which expressly describes him, in the year 1764, to have been a great chief or zamindar, dependent upon the Mogul empire through Suja-ud-Dowla; therefore I have the authority of the Charge that in the year 1764 he was a zamindar and nothing more, and a dependant upon Suja-ud-Dowla. He was not, therefore, a sovereign and independent prince; but the Charge itself places him in the situation of a person who, upon general principles, was liable to contribute to the defence of the state to which he belonged.

On general ground, as a subject:

Then was any alteration made in his situation?—And here I would only beg of your Lordships to give me credit for having proved this—that the situation of Bulwant Sing, in the year 1764, was that of a subject and nothing more. I am not now inquiring into that which your Lordships perceive must fall within the second proposition that I have stated as one of the three to be argued—whether any alterations were made by the agreements which were made between his former sovereigns and him, or between us and him; but I am now putting him upon the footing of his original situation, independent of all agreements, and I say that I have the authority of the Charge for stating that in 1764 he was a zamindar and nothing more, or a subject dependent upon Suja-ud-Dowla, and liable, therefore, upon general principles.

But, my Lords, was he or not liable according to the peculiar constitution and legal practice, as congenial to the spirit of that constitution, throughout the Mogul empire? Upon this subject it seems to me that the case will not admit of any doubt whatever; because I mean to prove that, let Cheyt Sing be whatever the honourable Managers please, —he shall, if they wish it, for the sake of the argument, be

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a prince holding of this country but paying tribute; or he shall be that which I conceive him to have been in point of fact, and nothing more, and which I will prove him beyond all question, notwithstanding all subsequent agreements which took place, in his original situation of a mere subject—I state that, according to the original constitution of Hindustan, wherever any traces of it are to be found, persons, whether standing in the situation of tributary princes or of mere zamindars, are in each case liable to furnish military aid to the sovereign to whom they belong. Upon this subject what is the general constitution of the Mogul empire? I will take the liberty to refer your Lordships to a passage in a book on which the honourable Manager will no doubt make his comments hereafter, but which I shall take the liberty at present of stating, as it is known to your Lordships to be a book of the first authority—I mean "The Institutes of the Emperor Akber," as translated by Mr. Gladwin, which "Institutes" give an account of the general constitution of the Mogul empire. Under the head of the Army I find these words:—

And, according to the law of Hindustan, as a tributary.

Authorities in proof.

"His Majesty has formed this immense multitude into different ranks. Some are solely under his own immediate orders and are excused from the performance of many duties that are required of others. Likewise a number of the inhabitants of the wilds and less civilized parts of the empire are by proper discipline made to be useful. The Zemeendary troops alone are in number upwards of four millions and four hundred thousand, as will hereafter be particularized."*

This is the account given of the army belonging to the Mogul empire in the history of the constitution of that state, which is to be found in this book, which, undoubtedly, is one of the first authority upon that subject.

But it does not rest here; for I undertake to prove that, whether your Lordships trace it through books of history or through the testimony of witnesses at this bar, from that period of 1560 down to the hour in which I am addressing your Lordships, you will find the fact appear equally clear, to whatever authority you may refer for information upon the subject.

In another book, which your Lordships also know is one of the first authority—I mean the letters by [M. Bernier] upon the state of Hindustan, who was many years physician

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* "Azeen Akbery, or the Institutes of the Emperor Akber," translated from the original Persian by Francis Gladwin; Calcutta, 1783; vol. i., p. 237.

9 JUNE 1792. at the court of Aurung Zebe, I find this account. In giving an explanation of what he calls [the military system of the empire] he states, that it consists of Omras and Rajas. Of the Rajas he says, there are some who are in the pay of the Mogul; and one of the reasons that he gives for it is this:—they are in the pay of the Mogul because their troops are extremely good, and that they may be always ready to keep the [rest of the Rajas, not in the Mogul's pay, in subjection, and to bring them to reason when they withhold their tribute, or when, from fear or other cause, they refuse to leave their estates and come forward] to join the army of the Mogul when required.* So that your Lordships perceive that, in this account of the constitution of Hindustan, in the year 1688 or towards the close of that century, when the constitution was in its highest glory and utmost perfection, he states that all those Rajas who pay tribute are, in respect of that situation, bound to join the army of the great Mogul whenever required. The test of dependence was the payment of a tribute, and the duty to furnish military assistance was the result of that dependence.

Practice of Aliverdy Khan, and Cossim Ali.

If we resort to the later periods, and take the time that has elapsed from that period to 1750, it is not denied by the Managers, but attempted to be explained away, that both Aliverdy Khan and Cossim Ali, whenever a war raged, called upon the zamindars for assistance. That fact is not denied, but it is said they were tyrants and usurpers, and nothing more. Whether they were tyrants and usurpers in this instance your Lordships will be able to explain, [when their conduct is] compared with this account of the constitution of the Hindustan empire. If we descend to a later period and to a book of great authority, Orme's History of [the Military Transactions of the British Nation in India], your Lordships will find this passage. Speaking of what happened in 1750, he says—

Orme's History of Bengal.

"Nazir-jing was advancing towards Delhi with a considerable army when he heard of the battle [of Amour]." "He sent orders to all the Nabobs and Rajahs whose territories lay to the south of the [Kristna] to hold themselves in readiness to accompany him with the number of troops which, either as princes paying tribute or as feudatories of the empire, they were obliged to furnish in times of danger to the Mogul government."

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* "Lettre à Monseigneur Colbert, de l'Étendue de l'Hindoustan," etc; printed in the "Histoire de la dernière Revolution des États du Grand Mogol; par le Sieur F. Bernier; Paris; 4 vols. 12mo., 1670; vol. ii., p. 216.

And then he adds— 9 JUNE 1792.

"It is probable, from the implicit obedience that was paid to these orders, [that he was generally believed to be the real representative of the] Emperor."*

Now it is impossible to produce a passage more pointed and more direct, in respect of authority, to the present purpose than that which I have now stated. He states that these orders were issued, not to the Nawabs, but to the different Rajas. He states that, as princes paying tribute, they were obliged to find troops, and that, the person giving the order being considered as the real representative of the Emperor, that order in the year 1750 was universally obeyed.

Cheyt Sing a tributary and dependant on the British.

Upon the ground, therefore, of all the information we can collect from general history with respect to the nature of the Mogul constitution, I think I am fairly warranted in asserting that, whatever was the situation of Cheyt Sing, it is enough for me that he paid tribute. Whether he was a common zamindar or a zamindar with enlarged and peculiar privileges, it made no difference whatever; still he was a subject dependent upon the British Government, and, therefore, bound to furnish assistance in times of public danger.

Confirmed by the evidence adduced by the Managers.

Let us now consider how the fact stands with respect to the evidence that has been given in the course of this cause. It happens peculiarly enough that, so much does this great principle run through all operations of government, that it is impossible for the Managers to produce evidence for the most opposite purpose, but it necessarily assists us. It occurs everywhere. Your Lordships will first find it in the printed Evidence, page 33. In a letter written by Major Munro, upon the 22d of November, 1764, to the President and Council, he expresses himself thus:—

"In a few days hence, after I have waited on the King, I shall proclaim him the superior and possessor of all Suja Dowla's country, and send letters jointly with him to all the Rajahs, &c. between this and Delhi, acquainting them with it, and desiring they will pay due obedience to the King and not join Suja Dowla, but assist in driving him out of the country."

So that it is very clear that, in the year 1764—evidence drawn from a period of time not liable to any objection—it was the opinion of the person who then commanded the British forces, and of the President and Council, that the

* "A History of the Military Transactions of the British Nation in Indostan"; London; 3 vols, 4to. 1775-1780; vol. i., p. 136.

9 June 1792. King, that is, the late Mogul who was then with us, had a right to issue orders to all the Rajas to be active in assisting him in driving Suja-ud-Dowla out of the country.

Your Lordships will further find in the printed Evidence, page 1470, this passage :—

> "After Bulwant Sing in violation of his treaty had deserted our army, it was, as before observed, our wish [that the country had been placed in the hands of some person on whose fidelity we might at least have had some dependence, and whose troops might have been an addition to our strength] in case of a renewal of war."

So that, in the year 1765, at the very moment when it was the object of the President and Council to acquire for the British Government a transfer from the King of the zamindary of Benares, they expressly state that it was for the purpose of having the zamindary transferred to the same person, whose troops might have been an addition to our own strength in case of war. But how could they be an addition to our own strength, if we had no right to use them in the year 1765? I, therefore, find it distinctly stated upon the records of the Company, as the opinion of the Governor General and Council, that in time of war they had a right to the service of the troops of Benares, supposing Benares to belong to them.

Opinion of the Council.

If your Lordships pursue this subject through the evidence still further, your Lordships will find that, in the printed Evidence, page 1000, there is also this passage :—I do not mean to rely upon any part of this evidence as fact, but merely to show that such a representation was made by the person whose language it is. It is utterly impossible he could have been the author of such a representation, unless warranted by the custom of the country, and that he ever could have asserted it if it was repugnant to the custom of any country:— It is in the answer of Nundcomar, who, setting forth his pretended merits, states that—

Further testimony from the printed Evidence.

> "At the time that Meer Mahomed Caussim Khawn having massacred and made prisoners many of the English had acquired a superiority, and the Nabob, Meer Mahomed Jaffier Khawn, thinking himself unprepared, refused to enter into a war with Meer Caussim in compliance with the English gentlemen's desire, I endeavoured by every method to persuade Nabob Jaffier Khawn to this step. I engaged myself to provide the supplies of money, to levy the troops, to assemble the zemindars, and, in short, to perform every requisite part."

If your Lordships also refer to the printed Evidence, page 253, you will find passages to the same effect, being

letters written by Cheyt Sing himself, after the rebellion broke out between him and the English nation, directing all his zamindars to join him in the field. So it stands upon the written evidence, and as resulting from the evidence produced by the honourable Managers themselves for opposite purposes! 9 JUNE 1792.

Let us now see how it stands upon the testimony of the different witnesses which have been produced. The first witness whom the honourable Managers thought fit to call upon this subject was Mr. Stables; and it is hardly necessary for me to inform your Lordships who Mr. Stables was. He was originally, in the year 1764, an officer serving in the army of Major Munro in the field, at the time that Bulwant Sing was at the head of 15,000 or 20,000 horse. Mr. Stables returned to this country and became a Director of the India Company. He afterwards returned to India as one of the Supreme Council;—and your Lordships know he was not ever in the habit of acting with Mr. Hastings, and was not very ready to adopt any of his opinions. When he is produced, his evidence goes to these points:—first, to show the general condition of Bulwant Sing and the state of the country under him; next, the precise relation in which he stood to Suja-ud-Dowla; thirdly, the circumstance of Bulwant Sing serving at that time; and lastly, that zamindars are dependent upon their sovereign in time of war. I admit Mr. Stables states he did not know that Bulwant Sing was a vassal, dependent upon Suja-ud-Dowla. However, nothing can be more clear than that he was mistaken in that, because it is repugnant to the Charge itself, which admits that at this period he was dependent upon the Company, and upon Suja-ud-Dowla. Evidence of Mr. Stables.

He is then asked this important question:— Whether, according to the true constitution of the Mogul empire, a vassal or a tributary is not bound to attend his sovereign in time of war? He answers, distinctly and positively, that they are. He says—"A tributary, or a vassal, or a zamindar, I conceive to be bound to attend his sovereign in the field when he is required." He is asked, What is his reason for this opinion? To which he answers, that most of their superiors give them orders to attend, and many do attend—

Question: "Whether, from your knowledge of the customs of India, a vassal is not always obliged, in time of war, to be attendant on his sovereign?"—*Answer:* "I should suppose that he ought to attend him." *Question:* "You say you suppose a tributary attends his superior lord;

9 June 1792. why do you suppose so?—for what reasons—upon what foundation do you suppose a zamindar is obliged to be attendant upon his sovereign?" —*Answer :* "I believe the superior always gives him orders to attend; and many do attend." *Question :* "Have you any knowledge upon the subject at all, but what arises from general reputation?"—*Answer:* "None."*

So that, according to the evidence of Mr. Stables, who resided many years in India, I am warranted to state that the general reputation of India was this—that a subject, whether a tributary prince or zamindar, in whatever relation he stood, was bound in respect of that relation to attend his superior into the field.

If we pursue the evidence still further, your Lordships will find that, in the very settlement of Bulwant Sing, the first view that we get of this man is at the head of 15,000 or 20,000 horse, serving in the army of Suja-ud-Dowla at the battle of Buxar, according to the evidence of Mr. Stables, against the English nation.

It may be said that this proves nothing, without I show that it was an act of duty upon the part of Bulwant Sing. Most undoubtedly it cannot be expected that I am to produce here the precise mandate ordering him to attend; but if your Lordships find, according to the evidence of Mr. Stables, that Bulwant Sing at that very period of time was upon the worst terms possible with Suja-ud-Dowla, and if your Lordships further find that every book which treats of the history of the constitution of India, and that every witness who can be produced at your bar, all agree in saying that persons in that situation are, in respect of their tenure, liable to attend, then I will leave it to your Lordships' candour to say, whether that act was an act of voluntary service and friendship to a man with whom you are in a state of enmity, or whether it was an act of duty. It seems to me that it would be an insult to your Lordships to suppose there could be a moment's doubt upon the subject; and I assume it, therefore, as a fact incontestable and incontrovertable, that in the year 1765, as appears from the evidence now before you, Bulwant Sing, who preceded Cheyt Sing in possession of the zamindary of Benares, in respect of the possession of that zamindary, was bound to assist his sovereign in the field. How? With 15,000 or 20,000 horse; which force was actually employed in the service of Suja-ud-Dowla against the English nation.

Military service rendered by Bulwant Sing not voluntary.

* "Minutes of the Evidence," p. 312.

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It did not rest here; for, after Bulwant Sing came over to us, even in the year 1765, we had the assistance of the force which belonged to him as the zamindar of Benares; for the Charge expressly states that his joining us at the time he did was of signal service. Joining us with a single person? No! it is impossible that could be of signal service; but joining us at the head of 20,000 horse, at the head of which he was then in the field. So that it appears that, when he was the subject of Suja-ud-Dowla, he assisted him with a force of 15,000 or 20,000 men, and that afterwards, when he was our subject, he was in the field with the same force—that force liable to our disposition and our orders. It seems to me, therefore, that no fact can possibly be stronger than this.

The right of demanding military service exercised by Cheyt Sing himself.

Then how does it appear afterwards in the case of Cheyt Sing himself? This very man, who asserted that, standing to our Government in the relation of a zamindar, he was not bound in respect to that tenure to assist us, no sooner erected the standard of rebellion against us than your Lordships find in every page of the Evidence peremptory orders issued to his zamindars, in every part of the country; and, in consequence of these orders, an army of 40,000 men collected in the course of a few days. I should be glad if the honourable Manager would state upon what principle it is possible that he could be exempted from furnishing the East India Company, his sovereign, with assistance in time of war, and yet that they who held immediately under him should be liable to give him that assistance. It seems to me he was liable to afford assistance to us upon the same principle that he claimed it of them,—and they were liable to give it.

Evidence of Mr. Markham.

The last evidence to which I would refer your Lordships upon this head is the evidence of Mr. Markham, and in which your Lordships will find he expresses himself thus:—

> "The subjects of Cheit Sing joined with him from the tenure they held under him—from the feudal tenure they held under him, which was the same as he held under us. They looked upon him as their chief."

And again,—

> "Many of the zamindars under him, as I understood, the aumildars under him, were obliged to hold horse and foot in readiness, whenever they were called upon; and it is part of the system throughout all India, except, perhaps, in our own provinces."*

* "Minutes of the Evidence," pp. 1727, 1730.

9 June 1792. So that your Lordships see that, whether this subject be considered upon the footing of general history; whether it be considered upon the ground of written evidence; whether it be considered upon the testimony of the witnesses who have been actually produced; in every instance, the fact is clearly and strongly proved that universally, throughout all India, by the true spirit of the Mogul constitution, persons standing in the relation in which this man did to the British Government are invariably bound to furnish assistance to their immediate superiors. This fact is proved, not merely by the witnesses whom we have called, but by the only person, Mr. Stables, whom the Managers have themselves produced and examined to this purpose, and who has made our case, if possible, still stronger than it comes out from the testimony of any of our own witnesses.

I put it this way:—Suppose Mr. Stables, who was in the constant habit of acting in opposition to Mr. Hastings, had been in the Supreme Council at the time that Mr. Hastings made this demand upon Cheyt Sing—I ask, whether, consistently with the evidence which Mr. Stables has upon his oath given at your Lordships' bar, namely, that persons in the situation of this man were liable to these sort of demands, he must not, as all other members of the Council then did, concur in the propriety of having made them?

The evidence uniformly in favour of the right.

So I am warranted to state, upon the full view of the case, that, with respect to this important fact, namely, the right of the superior Government to require of the person paying tribute, whether a common zamindar or a zamindar with higher privileges, assistance in time of war, [the proof] does not depend upon contradictory testimony. All the evidence is on one side—all, and uniformly with us.

If I have succeeded in establishing this proposition completely to your Lordships' satisfaction, I think it will be necessary for the honourable Managers to produce very strong evidence indeed to divest the superior Government of this great and important right, so essential to the purposes of public defence and to that of self preservation. I will not go the length of stating—because the case does not require it—that in no case whatever can the superior Government alienate or dispossess itself of that right; the case does not require the discussion, and therefore I will not enter into it; but this I may clearly say—that nothing short of an actual, express, renunciation of the right, clearly and distinctly stated, in such terms as no man can possibly misunderstand,

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can amount to such a construction as will divest it of the right of self preservation, in any case whatever. And this brings me then to consider the second proposition, which I took the liberty of stating to your Lordships, namely,— that there is not to be found, either in the deeds which passed between Cheyt Sing and his former sovereign, previous to the transfer of the sovereignty, or in those which took place upon that occasion, anything which can be construed into a renunciation of this right.

Second proposition, that there is no evidence of the renunciation of the right.

My Lords, it seems to me that the evidence of deeds or agreements, upon which the honourable Managers rely, has chiefly been of this nature :—First—the original resolution to render Bulwant Sing independent, in the year 1764. Second—the treaty of Allahabad. Third—the confirmatory sanad, in the year 1773. Fourth—the consultation of th 12th of June, 1775. Fifth—the consultation in which Mr. Hastings proposed he should be made independent : and lastly—the instructions to Mr. Fowke upon the occasion of the transfer of sovereignty. I propose very shortly to examine each of these several instruments : and I have no doubt whatever, that from that examination I shall make it most clearly appear, to the satisfaction of your Lordships, that, instead of there being an intention on the part of the supreme Government to renounce this right, which I am now warranted to assume I have proved to exist, it is most cautiously preserved in every instance whatever.

Instruments adduced by the Managers.

The honourable Manager who summed up this evidence began with desiring your Lordships to advert to the original resolution in the year 1764, by which Bulwant Sing, in consideration of his intended services, was to be rendered independent. The honourable Manager then proceeded thus :—

> "The treaty of Allahabad but carried into effect the original resolution in 1764. The treaty of Allahabad extended to the heirs of Bulwant Sing ; consequently to the heirs of Cheit Sing. Therefore at the time of Mr. Hastings making these demands, in the year 1778, Cheit Sing was independent under the treaty of Allahabad."

Examination of the treaty of Allahabad.

And the honourable Manager went the length of stating that Mr. Hastings would be just as guilty, in respect of having made these demands, upon the ground of the treaty of Allahabad, supposing there had been no subsequent agreements whatever, as he now contends he is guilty, when to the treaty of Allahabad all the subsequent agreements are to be added.

I own I felt no small degree of astonishment when I heard the honourable Manager state that the treaty of Allahabad carried into effect the original resolution of 1764. It turned

9 June 1792. out to be a fraud and a stratagem upon his part and nothing more. Bulwant Sing did not, as the honourable Manager states, join the British forces in consequence of this original resolution. The treaty of Allahabad was by no means intended to carry this original resolution into effect. So far from it, it is now in proof before your Lordships that, between the date of that resolution and the treaty of Allahabad, the President and Council had actually issued orders that this man should be dispossessed, if possible, of his zamindary and his person secured. And yet the honourable Manager states that the treaty of Allahabad was carrying into execution the resolution of 1774, and contends that Mr. Hastings is guilty in respect of a breach of that treaty!

But the doctrine is no less extraordinary in another respect. The first demand in question was made in 1778. In the year 1775, by the vote of General Clavering, Colonel Monson and Mr. Francis, the treaty of Allahabad was declared to be at an end. I should be glad, then, if the honourable Managers would condescend to inform your Lordships how Mr. Hastings could be guilty of a breach of a treaty in the year 1778, which treaty they had voted to be at an end in 1775.

With respect then to the treaty itself, the only article of the treaty of Allahabad that in any manner relates to Bulwant Sing is the fifth; and the words of it are these—

> "His Highness Shujah-ul-Dowlah engages in the most solemn manner to continue Bulwant Sing in the zemindary of Benares, Gauzepore, &c., on condition of his paying the same revenue as heretofore."

Dispute as to the meaning of the term Revenue.

This is the only condition upon which Bulwant Sing is to be continued in the possession of this zamindary of Benares. Now, there has been some little altercation between us and the honourable Managers with respect to the meaning of the word revenue, as it occurs in this treaty. But here again, I am extremely willing that rent and revenue shall have different significations, according to the honourable Managers, and they shall put upon each the construction that they think fit. For, in the first place, I say that, if revenue meant rent only, nothing can be more clear than that the words of this agreement must be restrained by that which is the subject of it; and, therefore, an agreement by which Suja-ud-Dowla agreed not to demand an increase of rent cannot be construed into things of a different sort, and which are not an increase of rent. In that light, it has no relation whatever to demands which are in the nature of taxes upon occasion of war. On the other hand, suppose it to mean

revenue contradistinguished from rent—then he is to pay the same revenue that he before did. Therefore, as military services, or a commutation for them, was part of his revenue before, he is subjected in every instance to a payment of the same revenue. So, therefore, whether rent or revenue means that which he paid in respect of land, and also in respect of the relation which he stood in as a subject, in either way the treaty of Allahabad made no difference in this respect, but Bulwant Sing under that treaty stood precisely in the same situation. 9 JUNE 1792.

Object of the treaty to secure Bulwant Sing in his zamindary.

The simple and plain object of the treaty of Allahabad was this:—Bulwant Sing having deserted the cause of Suja-ud-Dowla and having joined the army of the English, it became necessary, upon restoring to Suja-ud-Dowla his own country, to introduce some article to protect this man from being turned out of his zamindary for having attached himself to our cause. Previous to the treaty of Allahabad, Bulwant Sing stood in a double situation. He stood, first, in the situation of a zamindar, holding a certain portion of land in respect to which he paid a certain rent. Secondly, in the situation of a subject, and in that situation owing all the duties which result from that relation. In this situation of zamindar his tenure was of a precarious nature; he was liable to have his rent advanced; he might be turned out whenever his sovereign pleased; and, therefore, upon the restoration of his zamindary, unless an article had been expressly introduced in his favour, by which he engaged to continue him in possession upon the same terms, undoubtedly the consequence would have been that, the very day after, this man would have been dispossessed of the zamindary.

Previous position of Bulwant Sing.

The only intent, therefore, of the treaty of Allahabad was, by no means to alter the nature of the relation in which he stood, but merely to prevent the sovereign from turning him out of the possession of his zamindary, merely because he had assisted us with the troops under his command. It seems to me, therefore, that it would be perfectly idle to detain your Lordships any longer upon any consideration of this treaty; for it is absolutely impossible that the wildest imagination can, looking seriously at this treaty and meaning to construe it fairly, say it was the object of the President and Council to raise Cheyt Sing from the state of dependence in which he was before. All the evidence in the cause proves directly the reverse; for, almost immediately after

9 JUNE 1792. this, your Lordships know, a letter was written to Bulwant Sing from the President and Council, in which he was informed that the Nawab had a right to his obedience in all things. Your Lordships further knowing that, in the year 1775, the British nation accepted a transfer of the sovereignty of Benares from Asoff-ud-Dowla, I should be glad to know how it was possible that in the year 1765, by the treaty of Allahabad, Bulwant Sing could have been made independent? Your Lordships perceive that the drift of the argument upon the part of the honourable Manager who summed up the evidence is this:—he states, that the treaty of Allahabad did but carry into effect the original resolution, in the year 1764, to render Bulwant Sing independent. I admit it, and it is perfectly clear that independence there meant to make him a sovereign. The honourable Manager understands it in the same way, and, therefore, he contends that, inasmuch as the treaty of Allahabad was in execution of that original resolution, Bulwant Sing did become a sovereign.

Bulwant Sing not rendered independent by the treaty.

But if he did so in the year 1765, it will be again difficult to explain upon what ground, in the year 1775, the East India Company could actually transfer the sovereignty of Benares, which did not then, according to this construction of the treaty, belong to Asoff-ud-Dowla, and how we at this moment, on the part of the English nation, retain possession of that zamindary. So that, in every manner of light in which this treaty of Allahabad can be placed, nothing can be more clear than that it did not make Bulwant Sing independent—no, not even in the sense in which Cheyt Sing afterwards became so; much less that it exempted him from all those duties to which in the capacity of a subject he was before liable.

Sanad of 1773.

From the treaty of Allahabad we next come to the confirmatory sanad, which happened in 1773. Your Lordships will find this in page 39 of the printed Evidence, and the only words of this sanad upon which any reliance has been placed are the following, "that, exclusive of the jama specified in the kabuliyat of the present fussilly year 1178, no increase shall ever hereafter be demanded."

Now it seems to me that it is unnecessary to trouble your Lordships, with respect to this instrument, with a repetition of the arguments which I have used with respect to the treaty of Allahabad, because the Charge expressly

admits that this confirmatory sanad was intended merely for the purpose of carrying into execution that original treaty, and of securing and confirming it. Therefore, if the treaty of Allahabad did not exempt Bulwant Sing from being liable to these demands, neither could this confirmatory sanad, which it is not said was to extend that treaty, but, on the contrary, to confirm it such as it had been before. And here the same argument applies, because, when the stipulation is that exclusive of the jama no increase shall be demanded, as increase is a relative term, your Lordships must go to the antecedent. An increase of what? of the jama. Therefore, unless it can be said that a stipulation made with a zamindar that no increase of his rent shall be demanded necessarily imports, on the part of the sovereign, that in time of war he will not call upon him for a tax towards the burden of that war, it is impossible to argue that, supposing he was liable before, he became exempted by the sanad. I say it must be construed according to that rule which universally obtains, that words are to be understood according to the subject matter, and that the subject matter in each of these instruments was the rent and nothing more. 9 JUNE 1792. Confirmatory of the treaty of Allahabad. Conveys a limitation of rent only.

I am not aware that the honourable Managers have relied upon any other evidence except this, previous to the transfer of sovereignty—that, in the year 1775, upon an attempt made by the Nawab to take rent in advance from Cheyt Sing, the Government of Bengal, having then guaranteed the agreement, interposed and prevented it. Now it seems to me that that leaves the argument precisely where it was before; for, upon turning to the confirmatory sanad, your Lordships will find the objects of it to be these:—first, it specifies that no increase of rent shall be demanded; next, it states certain and precise days upon which the rent is to be paid. Therefore, undoubtedly, when Suja-ud-Dowla, in the year 1775, attempted to acquire the rents in advance, it became the duty of the British Government to interpose to prevent it, because it was an express violation upon his part of the words of the treaty. But here again, unless they can say that to require the payment of rent in advance is equivalent to imposing taxes in time of war, that seems to leave the argument precisely where it was, for this is no more than an instance of a direct breach of the express words of [a treaty,] and under which the Government of Bengal interposed to prevent that breach, they being Interposition of the British in 1775.

9 JUNE 1792. guarantees of the treaty. This seems to me to be all the evidence that occurs previous to the proposition that was made, upon the death of Suja-ud-Dowla, with respect to the transfer of the zamindary.

Independence of Cheyt Sing proposed by Mr. Hastings.

The Managers have, indeed, given in evidence a motion that was made at the Board by Mr. Hastings, that Cheyt Sing should be made independent and subject only to the payment of his tribute. The question would still be, in what sense the word *independent* is to be understood in that resolution? But here I beg to point out that the Charge expressly states that Mr. Hastings did, some time in 1775, propose and carry in Council a resolution that it should be made a condition of the treaty then negotiating with the Wazir, that Raja Cheyt Sing should exercise a free and independent authority in his dominions, subject only to the payment of his tribute; that, it should be made a condition of the treaty then negotiated. It seems to me that it would have been but candid if the Charge had gone on a little further, and stated, that, though this was proposed as a condition of the treaty, it was proposed while Mr. Hastings imagined Cheyt Sing to continue in the situation of a subject of Asoff-ud-Dowla; but afterwards, when a transfer of the zamindary was made, this was not in the treaty. So that your Lordships are led to form an erroneous opinion from the manner in which the Charge is framed. In the treaty itself there is no such condition whatever.

Not effected.

Consultation of the 12th of June, 1775.

My Lords, I now come to a very important paper, and one upon which the honourable Managers have laid considerable stress—I mean, the consultation of the 12th of June, 1775; and the Charge, after having set forth two of the propositions which it supposes to be contained in this consultation, says—

> "That by these and various other acts, agreements, treaties or stipulations, the said Rajah Cheit Sing was, under the authority of the East India Company, fully confirmed and secured in the free and uncontrolled authority in the regulation and government of his zemindary, subject to no demand of any sort or kind, or upon any pretence whatsoever, over and above the payment of the rent or tribute to be by him paid."

My Lords, I am now going into an examination of the consultation of the 12th of June in the year 1775, which will be found in the 53d page of the printed Evidence. I might point out, if it were necessary, that this consultation was in itself but preparatory to an agreement which afterwards took place. What, therefore, was the actual agreement

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can only appear from its being produced; and, therefore, if the honourable Managers were right in the constructions which they put upon the several articles of this consultation, in order to show the sense which Mr. Hastings then entertained upon the subject, or to prove the agreement made with Cheyt Sing, still I say, it was no evidence whatever, upon the clearest of all principles; because anything that precedes an agreement cannot be admitted as evidence to contradict that agreement. The agreement itself, being that which proves the latest intention of the party, is the only evidence. In one light I make no objection to this consultation; because, if the honourable Managers only mean to apply it to show the sense Mr. Hastings then entertained of the rights of Cheyt Sing, I desire to rely upon it as the strongest possible evidence in my favour; and I hope I shall be able clearly to satisfy your Lordships that, at this time, in the opinion of Mr. Hastings, there was no doubt whatever that Cheyt Sing was liable to the demands which he afterwards made upon him.

Preparatory to and superseded by a subsequent agreement.

This plan, which was produced by Mr. Hastings upon the 12th of June, 1775, consists of a great number of separate and distinct propositions; and I would take the liberty of stating to your Lordships that not one of these propositions is truly or correctly stated in the Charge. I am perfectly aware that it is not necessary to set forth any instrument precisely and literally in pleading. It is sufficient to set it forth truly as it is and according to its substance. But I say, that, in every one of the propositions which the Managers have stated, the sense is perverted.

Mr. Hasting's plan.

Want of candour in the Managers.

The Charge states—

> "That the said Warren Hastings did, some time in the month of June, in the year 1775, lay before the Council at Fort William, in Bengal, several propositions for the purpose of carrying into effect the intentions of the Board to render the said Rajah more independent."

Dissection of the Charge.

So that, from this statement, your Lordships would be led to suppose that the only object which Mr. Hastings then had in view and which he had explicitly and distinctly explained was, to confer independence upon this man; but, so far from this being the case, the introduction to the resolution is this—

> "The sovereignty of Benares and the dependencies having been ceded in perpetuity to the Honorable India Company, it becomes necessary to consider in what manner this right shall be exercised."

Right of sovereignty over Benares vested in the Company.

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The right of sovereignty! And yet, when Mr. Hastings' propositions are expressly introduced for the purpose of considering in what manner the right of sovereignty should be executed, the Charge entirely sinks and suppresses the right of sovereignty, and states that they are propositions merely for the purpose for rendering this man more independent. I say this is not a trifling variation, but a suppression of the material and operative words, and that which makes the whole difference in the argument between the honourable Managers and ourselves, which argument arises out of the precise relation in which the Raja then stood.

With respect to the second proposition, that the Raja should be empowered to exercise a complete and uncontrolled authority over his zamindary, under the acknowledged sovereignty of the honourable Company, in the government of the country dependent on him, in the collection of the revenues, and in the administration of justice—this proposition, which states that he is to exercise his authority, such as it is, under the acknowledged sovereignty of the Company, is omitted altogether in the Charge, though it is the very key-stone upon which the whole must depend.

The next proposition is—

The right of criminal justice and of mint to be conveyed to Cheyt Sing.

"That sunnuds be granted to the Rajah, specially conferring upon him the power of appointing officers to the charge of the Cutwally and the Mint of Benares, the latter to be subject to such orders and regulations as the Governor-General and Council shall at any time think proper to decree"—

which is stated in this way in the Charge—

"That in order to carry the said intention into execution"—

that is to make him independent—

"the said Warren Hastings did specially propose, and with the approbation of the Council did actually convey to Cheit Sing the power of executing criminal justice and of coining money within his dominions, which powers, in that country, have always been considered as marks of sovereignty."

Therefore the Charge would lead your Lordships to infer that, in respect to these marks of sovereignty, Cheyt Sing is to be considered as a sovereign, and, therefore, at that time Mr. Hastings actually proposed that he should be erected into the situation of a sovereign prince.

Now, my Lords, it is most extraordinary that these are but the introductory words of Mr. Hastings, and your Lordships will attend to what follows:—

"These offices have been considered as marks of sovereignty, at least this has served to withhold them from the possession of the Rajah"— 9 JUNE 1792.

Pretty strong proof that he was never considered as a subject before!—

"To whom they had been a heavy grievance, the Cutwally especially."

Mr. Hastings then says—

Reservation of sovereignty to the Company.

"If there be any weight in the plea for referring these prerogatives to the Company, the grant of them to the Rajah himself by special sunnuds will be a sufficient expression of their sovereignty, although the solemn renunciation of it already by the Nabob of Oude is the best and most valid charter under which it can be claimed."

So that your Lordships perceive that, at the very moment when Mr. Hastings is granting to this man the power of administering criminal justice and of coining money, he states [them] as marks of sovereignty merely for the purpose of arguing that, though he should be invested with those marks of sovereignty, yet it is utterly impossible that he can be considered as a sovereign. The Charge omits all the subsequent explanation and relies upon the former words, from which, when taken singly and separately, it would appear that he bestowed those marks of sovereignty upon him that he might be considered as a sovereign, though he adds an explanation to guard against any such construction; this man being, as Mr. Barwell afterwards explains it, only the officer of Government to exercise the marks of sovereignty in these two particular instances!

The next proposition, which is the fourth, is stated in the Charge in these words—

Concessions proposed to be communicated to Cheyt Sing:

"That Mr. Hastings did further propose that, while the Rajah should continue faithful to his engagements and punctual in his payments, and should pay due obedience to the British Government, no more demands should be made upon him by the East India Company of any kind, nor under any pretence whatsoever should any person be allowed to interfere with his authority or disturb the peace of his country; which proposition was agreed to by the Council, and was ordered to be communicated to the said Rajah Cheit Sing by Mr. Fowke, the then Resident of Benares."

But withheld.

Incorrect statement in the Charge.

Did or did not the person who drew this Charge know, that, though at one period of time this proposition was ordered to be communicated by Mr. Fowke, yet that, in point of fact, no such proposition was communicated? And here again [in] the very fundamental proposition upon which this Charge beyond all other depends, namely, that no more demands of any kind shall be made upon the Raja by the Company, the

9 June 1792. Charge states, contrary to the fact, that Mr. Fowke was ordered to communicate it in those words; the honourable Managers knowing—for they have perused the evidence themselves—that he was ordered to communicate it in words entirely different. And I undertake to show that the instructions to Mr. Fowke are in every respect incorrectly stated, and that the words which the Managers have taken out and introduced others in their place are the words upon which the whole depends, even to this extent, that the whole of the argument upon the other side, as conducted by the most able disputant whom we had to oppose, has proceeded entirely upon the substituted instead of the genuine expression, and that there would have been no room whatever for his argument if the genuine expression had appeared instead of the substituted one.

With respect to the last proposition, it is—

> "That, in return for these concessions and for the performance of his duty as a vassal to the Company, the Rajah shall engage to maintain in constant pay and ready at all times for immediate service two thousand horse."

The Charge states it in this way,—

> "That Mr. Hastings did propose to his Council that Cheit Sing should engage to maintain in constant pay a body of two thousand cavalry, for which the Company were to pay after the rate of fifteen rupees per month."

Now, your Lordships perceive that certainly the material question upon which this Charge depends is this:—was Cheyt Sing a vassal, and as such was he liable to the performance of any duty? That, I say, is the fundamental question upon which this Charge depends; and yet these very words "as a vassal" and "for the performance of his duty," though they are in the original proposition as brought forward by Mr. Hastings, are sunk and suppressed in the Charge, which is framed without any reference to them whatever!

Suppression of important terms by the Managers.

Now, I beg to know upon what principle of common sense or of common candour, when the question is whether the man was a vassal, and whether as such he was liable to the performance of military duty, it is brought forward as a proposition in the Charge that Mr. Hastings would have exempted him from any duty, omitting the words in which he states him to be a vassal and proposes a mode for the performance of it?

The last proposition is— 9 JUNE 1792.

"That, while the Rajah shall continue faithful to these engagements and punctual in his payments, and shall pay due obedience to the authority of this Government, no more demands shall be made upon him by the honourable Company of any kind, nor, on any pretence whatsoever, shall any person be allowed to interfere with his authority or disturb the peace of his country."

This is the proposition which I have before stated to your Lordships was materially altered; and in what respect I shall presently have occasion to observe, when I come to examine the instructions to Mr. Fowke. However, I will now meet the honourable Manager upon this ground: first of all, leaving it to your Lordships to judge whether the gentleman now at your bar has been candidly and justly treated in respect to the manner in which his propositions are stated in this Charge. Having left it to your Lordships to judge, I will now meet the honourable Managers upon their own ground. I will consider their Charge as the construction which they put upon this evidence; and, considering it in this light, I undertake to show your Lordships that the evidence in every instance leads to a conclusion directly opposite. The general conclusion upon which they rely, as I before pointed out, is, in respect to this consultation among others, that Cheyt Sing beyond the payment of his tribute was not liable to any demand whatever; in particular, that he was not subject to the demand that was afterwards made upon him, it being a tax upon the occasion of war.

Conclusion of the Managers opposed to evidence.

This plan consists of five several and distinct propositions. No particular observation arises upon the first, which is merely that he should pay into the treasury of the Company the same sum that he had paid before.

Mr. Hastings' plan.

The second proposition, the material one and which the Charge omits, is that he should be empowered to exercise a complete and uncontrolled authority over the zamindary, under the acknowledged sovereignty of the honourable Company, in the government of the country dependent on him, in the collection of the revenues and the administration of justice. So that it is perfectly clear, that the only independence that was meant to be conferred upon this man was as to any authority within his own zamindary, but that he was to be left in all other respects dependent upon the East India Company.

Cheyt Sing to have complete authority under the sovereignty of Company.

Now, I say, the honourable Manager contending that in

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Independent authority not intended.

respect of this independence, such as it is, he was exempted from these demands, one of two things must have been the case. Either at this moment Mr. Hastings had considered the question, and was fully aware whether Cheyt Sing was liable to this sort of demand under the government of his former sovereign, or he had not considered it. Take it either way. If he had not considered it—if it is admitted to me that it had not been the subject of his thought one way or other—then, undoubtedly, no inference can be drawn from the language in which he expresses himself, as proving any opinion that he entertained upon that subject. In that light, therefore, there is an end of the argument. But, supposing he had considered it, then, again, one of two things must have followed. Either he must have believed the right to exist or believed the right not to exist. If he believed it to have existed, he must have meant to preserve or abandon it. Now take the latter supposition. If he meant to abandon the right, believing it to exist, it is utterly impossible that he could have been silent upon the subject, and for reasons which I shall presently give; for your Lordships will find, in the observations which are made upon these two propositions, Mr. Hastings says:—

Inference from his silence upon the subject.

"The advantages which the Rajah would receive from those concessions, exclusive of the gratification which his pride would obtain from the possession of a state of power and dignity unknown to any of his ancestors, and the security of his person and possessions from the Company's protection, may be rated equal to many lacks of rupees, which though saved to him are no loss to the Government on which he depends, being all articles of invisible expense—in fees to the ministers and officers of the Nabob; in the charge of a double establishment of vakeels to both Governments; in presents and charges of accommodation to the Nabob during his residence at any place within the boundaries of his zemindary; in the fraud, embezzlements and oppressions, exercised in the Mint and Cutwally, besides the allowed profit of those offices"—

and other circumstances which he points out.

Now I say this, that it is utterly impossible that, at the time Mr. Hastings was pointing out and enumerating the several advantages which the Raja was to derive from the grant of independence, if he believed in the right to tax him, the right to call upon him for military aid, and if he meant to relinquish the right at this time,—it is utterly impossible that he should not have specified it as one of the advantages which the Raja was to derive from this grant of independence; because it is that which is in itself of infinitely more consequence than any one of the things he does enumerate.

But further, independent of its being omitted in that enumeration, which would be of itself conclusive, there is another fact which is decisive. Mr. Hastings states that the advantages which the Raja would derive from this grant of independence would be such as would be no loss to the Government upon which he depended.

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From his statement that the concessions would involve no loss to the Company.

Then, if the Government upon which he depended had a right to call upon him annually for five lacs of rupees upon occasion of war, Mr. Hastings could not have said that the consequences which would depend upon this grant of independence could be no loss to us. I argue thus—that the things he meant to grant were such as would be attended with no loss to the Government; but that this would have been an essential loss to the Government upon which he depended; and that, therefore, it was clearly within the intention of Mr. Hastings, supposing that he believed the right to exist, that it was not meant to be abandoned at this time.

The only other part of the alternative then that remains to be examined is this:—did Mr. Hastings at this time believe the right not to exist? I think that, from the very next proposition, I shall be able most clearly and distinctly to maintain the reverse. It is—

Cheyt Sing required to maintain 2,000 horse.

"That in return for these concessions, and for the performance of his duty as a vassal to the Company, the Rajah shall engage to maintain in constant pay and ready at all times for immediate service a body of 2,000 horse, or such a fixed establishment as shall be prescribed by the Governor General and Council."

Objections urged by the Managers.

Now, the objections which I understand are made to the present resolution are these:—First, it is said that Mr. Hastings merely proposed it as a matter of recommendation, whereas, the honourable Manager argued, if it was a matter of right he might have insisted upon it.

Secondly, he states that, if he did keep up such a number of troops, he was to be paid for them at a certain rate; and therefore he contends that this was, if it had been carried into execution, but a subsidiary treaty upon the face of it. And the Manager stated that it might, upon such a treaty, be as well argued that the king of Great Britain was the subject of Hesse Cassel.

Reply.

Your Lordships will attend certainly to what is the language of this proposition. Mr. Hastings proposes that he should keep up at all times, in war and peace, a fixed esta-

9 June 1792. blishment, consisting of a certain number of cavalry, to be disciplined by European officers. Why? Upon these two grounds:—first, in return for these concessions. Secondly, in performance of his duty as a vassal to the Company. Therefore, that was proposing something more than the performance of his duty as a vassal to the Company required. But this proposition distinctly asserts him to be a vassal, and as such to have a duty to perform; and it is absurd to argue against the non-existence of a duty from the terms of a proposition which begins with asserting that duty, and ends with proposing a mode for the specific performance of it.

The honourable Manager argues that, if he kept up these troops, it was to be made a matter of requisition and not of compulsion. If we had argued that he was bound at all times, in war and peace, to keep up and discipline two thousand men, then the argument would apply; but it does not apply, because the proposition holds out something to him more than his duty as a vassal would require. But does it follow, then, that his duty does not require him to do something short of that which is recommended? And upon the same ground stands the other objection respecting the payment of his troops. The honourable Managers say, "if he has a right to keep them up, he has no right to be paid for them." The honourable Manager there begs the question. We proposed, when we asked him to do something beyond the measure of his duty, that he should be paid something for such service.

Case of the Prince of Hesse Cassel not analogous.

With respect to the case put by the Managers of the subsidiary treaties between the Government of Great Britain and the Prince of Hesse Cassel, I can only say this, that when the honourable Managers will show me any transfer of sovereignty from the King of Great Britain to the Prince of Hesse Cassel—when they will show me a treaty beginning with these words—"that [in return for these concessions and for the performance of his duty as a vassal,] the Prince shall furnish Great Britain,"—then I will admit there is a similitude between this case and the case the honourable Manager has thought fit to put.

Recapitulation.

Therefore I rely upon these four propositions in the plan of the 12th of June, 1775, as proving clearly and distinctly this fact—the direct reverse of what the Charge states—namely, that, at the very moment when Mr. Hastings is held forth as the warmest friend of the rights of Cheyt Sing, when he is his

advocate for fresh privileges and immunities, at that very moment he states him expressly as being the vassal of the Company, and, as such, having a military duty to perform. 9 June 1792.

It is afterwards said that he is exempted, in respect of the generality of the words which afterwards follow in the next proposition, namely,—

Claim of exemption from demands in respect of the fifth proposition.

> "That, while he continues faithful to his engagements, no more demands shall be made upon him by the honourable Company of any kind—nor on any pretence whatsoever shall any person be allowed to interfere with his authority, or to disturb the peace of his country."

And, therefore, they say that, in respect of the generality of these words—"no more demands of any kind"—he was protected against the demand in question.

My Lords, I apprehend that no rule of construction can be more clear than this, that the sense of any instrument whatever is to be collected from the whole of it, comparing the several parts with each other. I conceive this to be another rule of construction equally clear, that, where general words occur, in any instrument, plainly for the purpose of effectuating any particular intent, there the general word shall not carry the particular intent beyond what is intended, so as to be co-extensive with the general words. If, therefore, I can satisfy your Lordships that these words "no more demands of any kind," taking the whole and entire sense of this instrument, meant only the demands specified, that is, such demands that he was to be exempted from because he was to be made independent with respect to his own zamindary, then there is an end of that argument.

It is necessary here only to refer to the former part of this proposition, which puts an end to the question; because, if by these words Mr. Hastings meant he should be exempted from these particular demands, then he could not describe them, as he has done, as demands the loss of which would be no loss to the Company. It is equally repugnant to that which also follows, the observation upon this proposition itself, and in which he states—

> "The voluntary restraint laid by the Government on its own actions will afford the Rajah the greatest confidence, and naturally inspire him with sentiments of fidelity and attachment, both from the principles of gratitude and self interest. Without some such appearance, he will expect, with every change of Government, additional demands to be made upon him."

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Limitation of the exemption.

Then the demands that he meant to exempt him from were such demands as he would otherwise be liable to upon every change of Government. But, without they could argue that every change of Government would necessarily be a state of war, when only he was liable to demands of this sort, it will be impossible to contend that he meant demands only resulting on occasions of war. So that, therefore, whether your Lordships take what precedes this proposition or what follows, it is clear that Mr. Hastings could have no intention whatever to release this right, supposing it did exist; and it is equally clear he was at that moment satisfied of the existence of it. Such was the opinion of Mr. Hastings, as proposed and expressed at this consultation.

Opinion of Mr. Francis.

My Lords, I now come to consider the opinions of the several other members of the Board, that were delivered afterwards upon the subject of this consultation. And the first which occurs is the opinion of Mr. Francis. Does Mr. Francis, in examining the comment made by Mr. Hastings upon his own proposition, in which he states Cheyt Sing to be a vassal, and to have a duty to perform—does he say, "this is not the fact; you have asserted him to be a vassal; he is not so, or, if he is, he is not liable to the performance of any duty?" No such thing! But he says he objects to the compelling the Raja to keep up an extraordinary force for our service; putting it upon the footing of its being an extraordinary force.

But, I will show your Lordships, Mr. Francis was of opinion that, as to the case of the Raja's ordinary force, we had a complete and full right to demand the assistance of it; for he says he has "no objection to its being made an article of an agreement with him, that he shall either put the troops he now keeps upon a better footing in point of discipline, or disband them, or raise an equal number in their stead." What will be the best method of making such troops useful?—Why make them useful, or whence the necessity of putting them on a better footing in point of discipline, unless in case of a war we might avail ourselves of their assistance? I, therefore, think I can fairly argue, even upon the admission of Mr. Francis, that, so long as it was confined to the ordinary force, we had a right to avail ourselves of its assistance.

Opinion of Col. Monson.

The opinion of Colonel Monson is still more decided. He states,—

"I am of opinion the Company should receive the Rajah's assistance on the same terms as he gave it to the Vizier or the present Nabob." 9 JUNE 1792.

So that, your Lordships see, here is the direct assertion of Colonel Monson that Cheyt Sing had given assistance to the Wazir or to the present Nawab; and he was of opinion that we should receive it upon the same terms that he had given it to them.

Opinions of Mr. Barwell and Gen. Clavering.

Mr. Barwell and General Clavering are against the proposition, on account of its being an extraordinary force, but neither of them pretend to say that he was not liable to the duty, as asserted by Mr. Hastings. Therefore the result of this consultation is that, while he was asserted by Mr. Hastings to be a vassal liable to afford this assistance, and by Colonel Monson as having rendered that duty to the Nawab, on the other hand it is not denied, only it proceeds upon the objection to its being an extraordinary force. Therefore, I rely mainly upon the consultation of the 12th of June, 1775, as proving this material fact, in direct contradiction to the Charge, that, even at this moment of time, if we are to refer to it for the sense which Mr. Hastings entertained of the duties to which Cheyt Sing was liable, at the moment when he was for most extending his rights, it proves beyond all question that he conceived him, even in the year 1775, to be liable to the demands he afterwards made upon him in 1778.

Instructions to Mr. Fowke.

I now come to a paper undoubtedly still more material than that which I have last examined, though it is of considerable importance—I mean, the instructions to Mr. Fowke; the former being that which merely passed in debate at the Board, which was thrown out for consideration and liable to alteration afterwards. Your Lordships recollect that these two debates happened, the first upon the 12th of June, 1775, and the second upon the 5th of July, 1775. The instructions to Mr. Fowke are dated upon the 24th of August, so that upwards of two months elapsed from the time that these debates took place at the Board to the date of these instructions.

We now come to the instructions to Mr. Fowke. The honourable Managers, in the Charge, have stated that Mr. Fowke was directed to communicate to the Raja this proposition—that, so long as he paid due obedience to the British Government, no more demands should be made upon him by the Company of any kind; which proposition was agreed to by the Council and ordered to be communicated to the Raja

9 June 1792. by Mr. Fowke. I now put it to your Lordships to see whether you can draw any other conclusion from the Charge than this, when it asserts that the resolution agreed to by the Council was ordered to be communicated, that it was communicated in the terms in which it was ordered to be communicated?

Now one of two things must have happened. Either the person who drew this Charge had read the instructions to Mr. Fowke, or he had not. How it could have happened that he had not read the instructions to Mr. Fowke it will be difficult to explain, nor will anybody believe it possible. If he had read the instructions to Mr. Fowke, it seems that he was bound to set forth fairly and correctly what those instructions actually contain, not to suppress and sink the words of the instructions themselves, and go back to the previous resolution proposed by Mr. Hastings, not adopted by the Board, and to assert that that was ordered to be communicated, leading to the conclusion that it was, in fact, communicated, which it was not. It seems to me that the Charge in this case does—I dare say not intentionally—equivocate, for the instructions actually communicated were directly the reverse.

Difference between the actual instructions and those proposed by Mr. Hastings.

Equivocation of the charge.

Supposing that these instructions had been read and considered, as they must by the person who framed this charge, let us consider in what language they are framed.

And first of all, it seems to me that the most natural thing would have been to set forth the precise words. Therefore, when I see men departing from that which is the natural and ordinary course, I conclude that they must have some reason for it which does not exactly appear. Now, what are the words? The words in the proposition are,—

> "That so long as he continues faithful to those engagements and punctual in his payments, and shall pay due obedience to the authority of this Government, no more demands shall be made upon him by the Honourable Company."

And your Lordships perceive that, in respect of the generality of that proposition, the argument has entirely proceeded on the other side. In the instructions to Mr. Fowke, the words are these,—

> "We shall never demand any augmentation of the annual tribute which shall be fixed."

So that, in the instructions to Mr. Fowke, there are no such words as the Charge would lead your Lordships to suppose, namely, "no more demands of any kind," but, in the place of

these words, are substituted the words "any augmentation of the annual tribute." 9 JUNE 1792.

These two expressions either meant precisely the same thing or different things. If they meant precisely the same thing, I shall be glad to know why the honourable Managers were at the trouble to cut out the original expression and to substitute another in its place. If they meant a different thing, it will be equally difficult to justify the manner in which the Charge is framed in that respect. But nothing can be more different, in the manner in which they stated the Charge, than the words contained in the original proposition of Mr. Hastings and the words afterwards mentioned in the instructions to Mr. Fowke. I say this, that the words "no more demands of any kind," in the proposition as brought forwards by Mr. Hastings, as explained by the whole context of that consultation, certainly mean only demands of a particular sort. But, if you detach them from their context—if you take a single and solitary expression—it is undoubtedly impossible to argue that "no more demands of any kind," in respect of the generality of the expression, do not include demands of the sort which were afterwards made upon him. But I put it to your Lordships, whether it is possible for any man to argue that the words "no more demands of any kind," and the words "no augmentation of the annual tribute," mean the same thing?

Definition of terms.

When they say, "we never will demand any augmentation of the annual tribute," they only tie themselves down not to demand that which would be an increase of the particular thing. Without, therefore, it can be shown that rights which accrue in a different respect, and are absolutely distinct from each other, can be considered as an increase of each other—without it can be put in that way—I say, the two propositions are entirely different. And, if we are to go upon the precise letter and expression that is to be found in the proposition, in the sense and meaning of those whose language is to be commented upon, I desire it to be understood that the instructions were, not that no more demands of any kind should be made upon the Raja, but that, so long as he continues to pay his rent, ["we will never demand any augmentation of the annual tribute."]

But it happens strangely enough that, in the instance of these instructions to Mr. Fowke, which, I believe, amount to fifteen several and distinct articles, this is the only one which the honourable Managers have thought fit to select

Misrepresentation of the Managers.

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Mr. Fowke instructed to take an oath of fealty from Cheyt Sing.

in the Charge, and this only one is incorrectly stated, and incorrectly stated in the substantial and operative words, introducing the whole difference in the argument. So that, in this very consultation, while he is told that Mr. Fowke is to notify to him the sovereignty of the Company, he is to receive from him an acknowledgment of his vassalage—he is to take an oath of fealty and allegiance. All these instructions, if they had been coupled with the words stated in the Charge, even the terms in which they are misstated would have been explanatory to restrain it to a particular demand. Three lines only are conferred upon these instructions in the Charge, and these three lines are just to misstate the essential and operative words!

The actual communication to Cheyt Sing not produced.

I now come to a paper which seems to me still more material even than this. And it really appears as if this Charge were framed upon a direct inversion of all those rules which are the usual guides upon these occasions, and that a paper is stated in the Charge in the exact inverse *ratio* to its importance and materiality. For your Lordships will find, in looking in the Charge, that the debate which preceded the instructions to Mr. Fowke occupied a whole page and a half: the instructions to Mr. Fowke, the result and fruit of this consultation, which was nothing but leading to these instructions, only occupy three lines. And now, when we come to the direct communication to Cheyt Sing himself, the most important of all, the Charge is utterly silent! So that, from that, your Lordships would never have been able to collect that there had been ever any communication, on the part of the British Government, to Cheyt Sing upon what conditions he was to hold. Here I pause and ask, whether it now appears in evidence that there was a letter written to Cheyt Sing, stating the precise conditions upon which he was to hold his zamindary?—that it was to state at length a debate—mutilating and garbling every proposition which had happened two months before, and only leading to this, which was the fruit of it two months afterwards?

Letters of Mr. Hastings to Cheyt Sing.

I now, therefore, come to those two material papers—the immediate communications made by Mr. Hastings, under the orders of the Board, to Cheyt Sing, of the terms under which he was to hold. And, my Lords, it is stated in this way:—first, he is informed—

"The districts which you held as a zemindary from the Nabob have been ceded to the English Company"

And then—

"That they being willing to continue the grant of the zamindary to

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you, in as full and ample a manner as you possessed it from the former sovereigns, &c., I have delivered to the charge of Mr. Fowke a sunnud, in the name of the Company, with a kelaut, with which he is empowered to invest you in due form; reserving, however, to the Company the sovereignty of the country, to the full extent that it was or might have been held by the late or present Soubah of Oude."

Investiture of Cheyt Sing.

It then goes on to state—

"That, upon occasion of this investiture, after paying a nuzerranna for the Company, which I have fixed at 10,000 rupees, it is necessary that you take an oath of fealty or allegiance to the Company; by which you are to understand that, on forming any alliance with a foreign prince, or acting in any manner contrary to the fidelity which you have thus sworn to maintain to the Company, your zemindary, with all the rights and privileges granted to you by the Company, will become forfeited; and it will be proper that a public proclamation should be made of these transactions, that the natives as well as Europeans may be fully informed of the grant made to you, with the reservation of the rights of sovereignty to the Company."

Oath of fealty required.

Now, my Lords, I apprehend that no rule can be more clear than this—that, in the [construction] of every instrument whatever, we must have recourse to the leading and essential words of it, which ascertain and fix the general sense of the instrument in which they occur. In this letter, we find these words—"he is to hold under the sovereignty of the Company"—"he is to take an oath of fealty and allegiance." What, then, were the duties to which he became liable, in respect to the situation in which he was placed by the information contained in this letter to himself?

Duties resulting.

In the first place, he was to hold under the sovereignty of the Company, that is, he was to be the subject of the Company. What are the duties of a subject to his sovereign? To defend the state to the utmost to which he belongs. If the instructions had stopped here it would have been fully sufficient; because I state, that, wherever the relation of sovereign and subject exists, it becomes the duty of the subject to give assistance to the state to which he belongs. But this is not all. He is to take an oath. Of what sort? An oath of fealty or allegiance. What was the oath of fealty? Was it not expressly this—do not the persons who take the oath of fealty, expressly in terms, swear—that "he would be faithful to his lord and defend him against all his enemies?" Then, if the oath of fealty necessarily imports that he who takes it would be faithful to his lord and defend him against all his enemies, was it not precisely the same thing when Cheyt Sing took an oath of fealty, that he would be faithful to us and defend us against all our enemies? I

9 June 1792. say, therefore, that, in taking an oath of fealty, Cheyt Sing expressly swore that he would contribute to the defence of this country.

In the next place, it is stated that he took an oath of fealty and allegiance. Is it necessary for me to enter into any explanation, before your Lordships, what are the duties which every person becomes liable to who takes that oath?

Exposition of allegiance according to statute.

Your Lordships perfectly well know that there is a legislative exposition of it in the statute of the 11th Henry VII., in which it is explained in this way—"that all subjects are bound by their allegiance to serve their prince and sovereign lord for the time being in his wars, for the defence of him and his land, and that for this true duty of allegiance no man shall be convict of any offence." Then I shall be glad to know, when this man, as it appears now from the account given of his investiture by Mr. Fowke, took an actual oath of fealty and allegiance to this country, whether, in the highest criminal court of judicature, I shall be told that allegiance does not import a defence of the country to which you belong? I say it is utterly impossible, unless your Lordships will put a different construction upon the word "allegiance" on this occasion from that which belongs to it upon every other. I am warranted to say, that, having taken an oath of allegiance, he expressly swore that, upon being called upon, he would contribute to the defence of the country of whom he held.

There is one other observation I would make upon this part of the case. I admit, undoubtedly, that the oath of fealty and allegiance is not explained, and that the specific duties are not pointed out; but this is not necessary, for your Lordships perfectly know that, in this country, every one of your Lordships takes the oath of allegiance. In what words is it framed? Why, in these—not, in terms, to defend the King against his enemies, but your Lordships swear, "I will be faithful and bear true allegiance." Then, do your Lordships, in swearing to bear true allegiance, not become bound, to the utmost of your power, to give your assistance, as subjects to the state to which you belong? I say, therefore, that, in respect of the consultation that passed preceding these instructions to Mr. Fowke—from the instructions and the letter of Mr. Hastings himself—considered upon every one of these grounds, so far from there being any expression that could amount to an exemption from those duties he was

liable to before, [the liability] is guarded and protected by the strongest and most apt terms that it is possible for human wisdom to introduce. 9 JUNE 1792.

Cheyt Sing liable to the demands, both before and after transfer of sovereignty.

My Lords, I have now gone through an examination of the several consultations which took place previous to the transfer of the sovereignty, and of what passed upon the occasion of that transfer; and, from these, I apprehend that it is now perfectly clear that Cheyt Sing, in his original situation, was liable to the demand that we made upon him, and that he continued to be so after the transfer of the sovereignty to us.

But, my Lords, I might, for the sake of argument, abandon every part of the ground which I have hitherto maintained. I might admit to the honourable Managers that Mr. Hastings was completely mistaken in supposing, in common with the other members of the Board or with any of them, that Cheyt Sing was liable to these demands; still, I say, that it is not upon that that your Lordships' judgment must ultimately turn. It is not into the instructions of Mr. Fowke, it is not into the consultations which preceded them, it is not into the letters of Cheyt Sing, that your Lordships must look for the guilt or innocence of Mr. Hastings. The question is—from what motive did the acts proceed which are now imputed to him as so many crimes?

I apprehend this to be a principle of jurisprudence, immutable and universal, not peculiar to the law of this country, but prevailing wherever the form of civilisation is seen—that, where a magistrate, intrusted with discretionary powers, to be made use of under a combination of circumstances which the law cannot possibly foresee, acts for the best, no matter if he is mistaken, provided you are satisfied that it is error merely, however gross the error may be, it never can constitute guilt. The question after all will be—from what motive did Mr. Hastings act when, in the years 1778, 1779 and 1780, he brought forward, as a resolution to be adopted by the Council, the several demands to be made upon Cheyt Sing which are the subjects of this Charge? And, with respect to this, I certainly have no reason whatever to complain of the manner in which this Charge is framed; because I admit that it does distinctly and pointedly express what are those motives in which it means your Lordships ultimately to say that the criminality of conduct of Mr. Hastings is to be found.

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Breach of duty imputed to Mr. Hastings in the Charge.

In the first place, it alleges that they are demands made in breach of treaties and in breach of his duty. Now, I apprehend that nothing can be more clear than this, that, though it is not expressly averred in this Charge that Mr. Hastings, knowing it to be a breach of treaty, yet made the demand, yet, inasmuch as it is alleged that it was a breach of duty, that is equivalent to expressing that he knew it to be a breach of treaty, because otherwise it could not be a breach of duty. A breach of treaty is not necessarily a breach of duty; it can only become so when known to be such by the party at the time.

The first point, therefore, of which the honourable Managers must satisfy your Lordships is this, not merely that it was a breach of agreement, but that Mr. Hastings knew it to be such—that at the moment of proposing these demands, he was conscious he had no right whatever to make them.

Malicious motive imputed.

The next allegation of a criminal nature in the Charge is —"that he did this from malice, and with a design to oppress, harass and ruin, Cheyt Sing." Your Lordships must, therefore, be able to say, upon considering all the circumstances of the conduct of Mr. Hastings, upon all these various occasions, that, not a sense of public duty, but this private and malignant motive was the inducement from which he acted. This, therefore, leads me to consider the third proposition which is stated to your Lordships, namely, whether or not, upon the consideration of all the circumstances of this case, Mr. Hastings can be charged with malice, in respect of his conduct upon occasion of these various demands.

The demands adopted by the Board.

My Lords, I take the liberty of stating to your Lordships that, though these demands are stated upon the Charge as if they were the single and separate acts of Mr. Hastings, yet that in effect they are not so, but that they were, in every instance, a resolution adopted by the majority of the Board as it was then framed; therefore the proposition upon which the Charge is founded is—that Mr. Hastings, in making these several demands upon Cheyt Sing, had no other motive but a design to ruin him. This can only be proved in one of two ways—either by positive evidence, which must consist either of his own confession, or of declaration by other persons proving to have heard him make use of threats to that effect; or, in the want of any such positive evidence, it

can only be proved by circumstantial evidence—that is, that your Lordships, upon considering all the circumstances of the case, must necessarily be led to that conclusion. 9 June 1792.

In this case, I think it will scarcely be contended that there is any direct or positive evidence. But it is said that this intent is to be inferred from all the circumstances of the case. Before I enter into an examination of what took place upon the occasion of proposing this demand, I would beg leave to state, distinctly and specifically, to your Lordships to what cause it is imputed. The only source to which it is possible to ascribe the imputed malice on the part of Mr. Hastings is this—that, in the month of June, in the year 1777, it being then reported that General Clavering had succeeded to the Government, upon the resignation of Mr. Hastings, Cheyt Sing had deputed a wakil to congratulate General Clavering upon succeeding to the Government, and that this man did proceed as far as Moorshedabad, when he heard that it was not so. And, upon this cause, your Lordships are to believe that which this Charge imputes —that from this instant there sprung up in the mind of Mr. Hastings a fixed and determined resolution to ruin this man; that during five successive years he continued firm and unrelenting to this purpose, nor stopped till, by a base perversion of all the powers intrusted to him by Government, he had finally effected the plan he had formed. This is the inference which your Lordships are to draw.

Pretented offence given to Mr. Hastings by Cheyt Sing in 1777.

This happened in the year 1777; it becomes, therefore, necessary to consider what was the state of the Council from the year 1777, when the supposed cause of offence arose, down to the year 1778, when the first demand was made. Colonel Monson died in the month of September, in the year 1776. The Council was then reduced to Mr. Hastings, Mr. Barwell, General Clavering and Mr. Francis; so that from this period of time Mr. Hastings had a majority in the Council by his casting vote. In this state things continued till the death of General Clavering, in August, 1777. General Clavering died two months after the supposed injury. During all this period, there is no trace whatever to be found of Cheyt Sing upon the consultations of the Council. On the death of General Clavering, in the year 1777, the Council consisted of Mr. Hastings, Mr. Barwell and Mr. Francis; so that at this time Mr. Hastings had a majority, without his casting vote. Mr. Wheler arrived in December, 1777, leaving Mr. Hastings still with the casting

Conduct of Mr. Hastings during

9 JUNE 1792. — the following thirteen months.

vote; to July, 1778, he still continued with the casting vote: so that, in that time, a period of thirteen months, Mr. Hastings continued in possession, either by his casting vote or by a majority, of the power of the Council. During all which period there is not an attempt upon his part, though subsequent to the supposed cause of offence, which might have been supposed to have operated most violently while most recent, yet there is not an attempt upon his part to bring forward any one measure in the slightest degree injurious to the rights or privileges this man possessed.

But the first time Mr. Hastings comes forward with any resolution which can be construed as injurious to the rights of Cheyt Sing, and in respect of which your Lordships are desired to infer malice, is upon a great public occasion, threatening the safety of Bengal, and which Mr. Hastings, as Governor General and responsible for the safety of our possessions there, brought forward. What did he bring forward? Merely a proposition that he, as a subject of the Company, should pay a certain proportion for the defence of those territories of which his possessions formed a very considerable part. This is the occasion upon which the demand was made.

Now, it becomes necessary to consider what had been the state of the Council for some time previous to the making of this demand. Your Lordships know that, from the moment General Clavering, Colonel Monson and Mr. Francis, arrived in India, they had been in the habit of daily and uniform opposition to every measure Mr. Hastings ever proposed. Two of these gentlemen are unfortunately dead; the third—Mr. Francis—only survives. I do not now inquire into the motive of that opposition which Mr. Francis had uniformly given to every measure proposed by Mr. Hastings. Whether it proceeded from good, or whether it originated from bad motives, is totally immaterial with respect to the present question. It is enough for me to state that, in point of fact, Mr. Francis had been in the constant habit of differing from Mr. Hastings upon every great public measure he brought forward. Now, instead of ascribing that opposition to any one unworthy motive, or seeking to depreciate in the slightest degree the wisdom or virtue of Mr. Francis, I am willing to concede to the honourable Managers this — that he was the most wise and the most virtuous of men—nay, if they please, an angel amongst men. Only, in return, let them

Opposition shown by Mr. Francis to Mr. Hastings.

admit this to me—that this most wise and most virtuous of men had not ceased to be as wise and virtuous upon the 9th of July, 1778, as he had been from the moment of his arrival in India. That is all I require the honourable Managers to admit to me. Let us, then, see in what manner, possessed of all this wisdom and virtue, and certainly not possessed of any malice or enmity to Cheyt Sing, Mr. Francis acted upon the occasion of this demand being brought forward. 9 JUNE 1792.

An honourable Manager has stated, and I think correctly, what is the principle of responsibility, and that is —that in an executive council each man is responsible for his own act, and it is no justification for the one to say the other did the same thing. I admit this in certain cases, that is, in the instance of a case, clearly decided, either of the breach of some known law or of some moral duty— a case about which no man can doubt, so that every person, upon the mere consideration of it, would say "it is impossible but that all these men were conscious of criminality at the moment they did this particular act." But, where the act done is of a doubtful nature—where it depends upon the opinion individuals may respectively form of it—surely it is a powerful argument to urge, if I find a council composed of four different persons, and among them one who is represented as the most wise and virtuous of men, and who is acquitted of having any particular malice against the person of whom the demand is made—if I find him concurring in that demand, it affords a strong argument to show that it is a case which admits of considerable doubt, whether a man is to be convicted of malice because he thinks fit to make it.

Concurrence of Mr. Francis in the demands.

It seems to me to result in this. If Mr. Francis concurred in this demand, either the honourable Manager must admit that he was, upon the same grounds as Mr. Hastings, a person who entertained malice against Cheyt Sing, or he must be able, in some particular circumstances, to distinguish that case from the case of Mr. Hastings. But if they can do neither, then I think we advance a considerable way in defence of the cause of Mr. Hastings as against this honourable gentleman, when we show that the man in whom they have the greatest degree of confidence, and who is the theme of their constant praise, acted precisely on this occasion as Mr. Hastings would have done. Nay, I go further, and pledge myself to show, tracing Mr. Francis through every

9 June 1792. stage of the consultations upon the occasion of these different demands, that, if Mr. Hastings had acted by the advice of Mr. Francis, he must have been, precisely as he now is, liable upon the same ground and footing to all that this Charge imputes to him!

The proposition that is contained in the consultation of the 9th of July is this:—

"That Rajah Cheit Sing be required in form to contribute his share to the burthen of the present war, by consenting to the establishment of three regular battalions of sepoys, to be raised and maintained at his expence."

Now, it is a little material to attend to the forms in in which the proposition, as made by Mr. Hastings, is framed. "His share of the burthen of the present war." It is, therefore, clear that the proposition asserts that a share of that burden belonged to him. The debate begins with Mr. Francis, who expresses himself in this way—

"On the supposition that the detachment now employed under Colonel Leslie will not return for a length of time into the provinces, I acquiesce in the proposal relative to Rajah Cheit Sing; but I think he should be informed that this additional charge will not be imposed on him beyond the continuance of the present war."

What! Did Mr. Francis step forward and say, the first moment that this resolution was proposed—"why, this is a gross breach of treaty; it is contrary to the engagements which exist between us; it is an act which proves malice so clearly that you may depend upon it, if upon the force of your casting vote you carry it into effect, there will be virtue enough in the Commons of Great Britain to impeach you?" Was this the language of Mr. Francis? No! He, on the contrary, gives a direct, unqualified, acquiescence in the demand. Here, then, is the direct acquiescence of Mr. Francis, without any limitation or qualification whatever, in that demand which is now imputed to Mr. Hastings as a crime, and with respect to which he is said to stand in the situation of a person proved as having entertained malice against Cheyt Sing.

The next opinion that occurs is that of Mr. Hastings. And, first, I shall mention to your Lordships that, at this period of time, supposing Mr. Hastings not to have entered any resolutions whatever upon the records of the Company, they must have then gone home to the court of Directors, it appearing upon these records that Mr. Francis acquiesced

Qualification proposed by Mr. Francis

in the propriety of this demand, entertaining no doubt whatever of any sort. Now, in the minute delivered in by Mr. Hastings, he expresses himself thus:—

9 June 1792.

placed on record by Mr. Hastings.

"The qualification proposed by Mr. Francis, that is, that the additional charge will not be imposed beyond the continuance of the war, is consonant to my intention in the question and is implied in it. I should have no objection to its being expressed in an additional clause."

He then states—

"That our resolution upon this subject may be unanimous, I agree to add to the question the following words—'and to be disbanded at the end of the war;'—but, perceiving that the difference in our opinion upon the subject arises, not from a disagreement respecting the requisition, simply considered by itself, but from a different understanding of the right of the Company to exact, under any pressure of affairs, more than the sum stipulated by the sunnud granted to Cheit Sing and the cabooleat given by him in return, I must adhere to the question as it stands, wishing to avoid the question of right. If, however, we cannot agree upon the point, still I would wish to have the requisition made in the words of the question, and leave the decision of the future right to our superiors."

Proposal of Mr. Hastings to refer question of right to the Company.

Mr. Francis had, upon the face of this consultation, given a direct and unqualified acquiescence to this demand, without even throwing out a doubt either as to the right or as to the expediency of making the demand. Who is it that states upon the records of the Company, for the information of the court of Directors, that doubt existing in the breast of Mr. Francis, and which he had thought of so little consequence that he meant to confine it there, and not put it upon the records of the Company? Mr. Hastings!—the man suspected of malice against Cheyt Sing—the man believed to be conscious of no right to make this demand—he it is that provokes observation, that draws the attention of the Directors, and afterwards of Parliament, to this subject, by stating that doubt to make the demand which never would have appeared, by any act of Mr. Francis himself, upon the records of the Company! And yet malice is to be imputed to Mr. Hastings and not to Mr. Francis! Not, as I say, that malice is to be imputed to either; but, upon this subject, the inference would apply with infinitely more force to one than the other. Mr. Francis acquiesced in the demand, not for one year only, but during the war.

Then, if Mr. Hastings knew this to be a violation of his public duty and a breach of treaty, and intended it only for the purpose of oppressing and harassing Cheyt Sing, consider what an extraordinary conduct that of Mr. Hastings

9 June 1792. was. Mr. Hastings, who had uniformly experienced the opposition of Mr. Francis with respect to all measures he thought right, must be supposed to have had a consciousness that this measure was a direct and flagrant violation of all those agreements to which Mr. Francis himself had been a party; for it is only in respect of its being a manifest violation of those agreements that the inference can arise. Was it not an unexpected victory to him, when, instead of finding an objection come from Mr. Francis, Mr. Francis acquiesces directly in it? Is that the conduct of a man conscious of any guilt, knowing the subject would not bear an inquiry, himself to state the doubt of Mr. Francis?

What does Mr. Hastings do? He appeals to the court of Directors to prevent that being done in which Mr. Francis had acquiesced, namely, that the demand should be made during the war; for he states that there is a doubt with respect to the question of right, and proposes to leave it to their superiors.

Then, who is the man that calls upon the court to investigate this subject and to prevent a repetition of the demand in future, if they were of opinion it was contrary to those treaties, every one of which were in their possession? Mr. Hastings is the only man who thinks it worth his while to refer the question of right, and to call upon them expressly to interpose and oppose the demand in future, if they think they have no right to make it! Is this like the conduct of a malicious man?

I take it, from the representation contained in this minute of Mr. Hastings, that Mr. Francis did entertain a doubt as to the right of making the demand. Then, surely, I may say that Mr. Francis is the strongest possible witness in favour of the expediency of the demand, who, doubting of the right to make the demand, yet thought it necessary to make it.

Conduct of Mr. Francis and Mr. Hastings contrasted.

Again, upon the ground of malice—I shall be glad to know in what manner the argument would have been urged against Mr. Hastings by the honourable Managers, if they could only have gone the length of proving that he was of opinion that he had no right to make the demand, in the same manner they would now argue that Mr. Francis was? Would they not have then said, that, the demand being made expressly against right, that opinion being avowed, it was robbery and nothing less? Yet the conduct of

Mr. Hastings and Mr. Francis stands distinguished only thus—that Mr. Francis acquiesces in the demand of five lacs of rupees from a man who could not resist the demand when made upon him, he knowing we had no right to make the demand; whereas Mr. Hastings makes it, asserting we had a right to make such demand. 9 June 1792.

Whether, therefore, Mr. Francis's conduct is less criminal, who acquiesced in the demand, knowing we had no right, than the conduct of Mr. Hastings who avowed and knew the right, I leave to your Lordships' wisdom and justice to decide.

CONTINUATION OF THE SPEECH OF ROBERT DALLAS, ESQ., COUNSEL FOR MR. HASTINGS, IN SUMMING UP THE EVIDENCE IN DEFENCE ON THE FIRST ARTICLE OF THE CHARGE, RELATING TO BENARES; 11 JUNE, 1792.

11 JUNE 1792

IN the conclusion of what I had the honour to address to your Lordships when the Court last met, I had been endeavouring to conduct your attention to the consultation of the 9th of July, in the year 1778, in which the idea first originated with Mr. Hastings, upon the intelligence of a war with the court of France, to call upon Cheyt Sing to contribute that sum towards the public defence which forms the first general allegation in the present Charge. And, my Lords, I had gone, as far as I had proceeded, through an examination of the different opinions professed by the various members of the Board, in the course of that consultation, with this view—in order to ascertain, in a case where the allegation of malice is to be the result from all the circumstances of the case, that the inference would apply, with equal if not with greater force, to the case of all the different members who were then present, as well as to the case of Mr. Hastings; against whom, however, it is not pretended that any malice can be charged, but who, on the contrary, at least some of them, are acquitted of it in the fullest manner. I had endeavoured to show that their conduct stands precisely upon the same ground, and that the inference is no more warranted in one case than it would be in the other.

Consultation of 9th July 1778.

With this view, I had proceeded the length of stating what was the opinion Mr. Francis delivered upon that subject; and I have endeavoured to point out to your Lordships' attention that, so far from having objected to this demand, which is now stated to be a breach of duty, and in respect of which your Lordships are desired to infer malice as existing in the mind of Mr. Hastings against Cheyt Sing, and that malice to be the only inducement for the act he did

11 JUNE 1792.

—that, so far from its having appeared to Mr. Francis at that time in that light, though in the habit of constantly differing from Mr. Hastings in all other cases, the moment this measure was proposed, he gave it his unqualified assent and acquiescence. I also endeavoured to state that he did this upon the ground that it was expedient and proper that the demand should be made, even though at the time he professed to entertain some doubts with respect to the strict right;—doubts, however, which he did not think of sufficient consequence to be stated upon the records of the Company, and which are put there by the act of Mr. Hastings alone. Following the consultations downwards, I drew your Lordships' attention to the opinion of Mr. Hastings. And, because this is the origin of the transaction which continued through all the subsequent demands, and is said to be the great source of malice, your Lordships will throughout bear in your minds this important fact—that, on the proposal of making the first demand, when it originated with him, then Mr. Francis' doubt was not put upon the records of the Company. Mr. Hastings was the person to put that doubt upon the records, and to take the opinion of the court of Directors upon the subject; by him the appeal was made to the court of Directors in the first instance, and by him the request was made, in substance, that, if it appeared to them that the demand was contrary to right, they would prohibit it in future. In this opinion Mr. Wheler also, who was another member of the Board, concurred entirely with Mr. Francis. His situation, indeed, stood distinguished in some respects and in some material degree from that of the former gentleman. Your Lordships know perfectly well that at all the several consultations, when it was considered upon what precise terms and conditions Cheyt Sing should hold, upon the transfer of sovereignty, Mr. Francis was present. With Mr. Francis originated the idea of annexing Benares to the English possessions. Mr. Francis brought forward, from time to time, various resolutions relating to the situation and tenure of Cheyt Sing: he had been present at all the former debates: it was, therefore, natural to suppose that he should be better informed and more enlightened upon the subject than it was possible for Mr. Wheler to be. Therefore, all we find upon the part of Mr. Wheler is this—

Concurrence of Mr. Wheler in the demands on Cheyt Sing.

Part taken by Mr. Francis in arranging the tenure etc., of Cheyt Sing.

"Wishing to avoid the question of right, I acquiesce in the measure; but I think it should be qualified in the manner proposed by Mr. Francis."

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Qualification urged by Mr. Francis and Mr. Wheler.

What was the only qualification which had occured both to Mr. Francis and Mr. Wheler? It was this, that Cheyt Sing should be informed that the additional charge should not be imposed for a period longer than during the present war. But in this did Mr. Francis or Mr. Wheler in any respect whatever differ from Mr. Hastings? Most undoubtedly not! For, upon referring to the proposition as originally introduced by Mr. Hastings, your Lordships will find this striking fact, that both Mr. Francis and Mr. Wheler do in effect but repeat, almost in the words of Mr. Hastings, that very restriction and limitation which he himself had originally proposed; for in the very terms of the proposition are these very words—

"That he shall be required to contribute his share of the burthen of the present war."

Which, undoubtedly, means, during the present war; for there can be no longer a contribution than during the present war. When there is no war there is no burthen to be borne by any one. Therefore the qualification that is proposed is the original idea Mr. Hastings had thrown out; and, when it is proposed, Mr. Hastings immediately says—"The qualification proposed by Mr. Francis is consonant to my intention in the question and is implied in it."

Consonant with the intention of Mr. Hastings.

So that, comparing the opinions of these several gentlemen upon this occasion, it appears that they differed in no one respect whatever as to the expediency, considering the state of public affairs and the situation in which the Raja stood to the Company, of making the demand at the time Mr. Hastings proposed it—even Mr. Wheler and Mr. Francis, who were in the habit at that time, I believe, of acting together in opposition to all the measures of Mr. Hastings' government. Therefore, I think so far, at least, I may venture to say, appealing to the candour and to the honour of every noble Lord who hears me, that, arguing this case upon the ground of inference to be deduced from the act considered under all its circumstances, the inference of malice, if it applies at all against any one, surely applies with more force against those who, doubting of the right, yet acquiesced in the demand, than it does against him who contended that the right existed, and felt it his duty to enforce it on behalf of the public. If there be a distinction, it is in favour of Mr. Hastings, and to the prejudice of those gentlemen who were the other two members of the Council at that time.

The next opinion that occurs is that of Mr. Barwell. He

agrees in effect and substance with the former opinions. 11 JUNE 1792. He thinks the demand ought to be made; but, upon recurring to the opinion of Mr. Barwell, which your Lordships will find in the 67th page of the printed Evidence, you will see he goes infinitely further than even Mr. Hastings himself upon this occasion; and yet it cannot be pretended that any malice existed in the breast of Mr. Barwell, for your Lordships know that the malice is confined to the breast of Mr. Hastings, and traced up to an instance which is supposed to be peculiar and personal to him. I should mention, before I come to the opinion of Mr. Barwell, that this striking fact arises, that, in 1775, when it was first proposed that Benares should be annexed as a feoff to the sovereignty of Bengal, at the time when the only question was what rights, what privileges, what benefits, they should confer upon Cheyt Sing, Mr. Barwell, who then had been a great number of years in India—many in the Supreme Council—and who was perfectly well acquainted with the manners of the natives and all the diversities of their various opinions, expressed himself in these words:—

Concurrence of Mr. Barwell.

"Whatever may be resolved respecting the revenue paid by the Rajah [of that country, the English Government ought to stand in the same relation to it as the late vizier; because the country of Benares and Gauzipore is a natural barrier to these provinces, and the Rajah should have the strongest ties of interest to support our Government in case of any future rupture with the Subah of Oude. To make this his interest, he must not be tributary to the English Government; for, from the instant he becomes its tributary, from that moment we may expect him to side against us, and, by taking advantage of the troubles and commotions that may arise, attempt to disburthen himself of his pecuniary] obligations."*

Opinion of Mr. Barwell, in 1775.

This was the opinion of Mr. Barwell in the year 1775, at the moment that the thought first occurred of annexing the zamindary of Benares to the English possessions in India—a prediction which your Lordships will find completely verified in the event of this demand. Having this opinion, in the year 1775, of what would be the consequence of Cheyt Sing becoming a tributary of the English nation, your Lordships will find that, in the year 1778, in the course of this debate, Mr. Barwell still acted under the same impression, for he states—"An acquisition of revenue and military force I suppose to have been annexed to the grant

* Extracts of Secret Consultation, 13th February, 1775.—Printed in the "Minutes of the Evidence," p. 44.

11 JUNE 1792. of the zamindary of Benares and Gauzepore to the Company;" —an express declaration, therefore, on the part of Mr. Barwell at least, in what manner he expounded the grant of the zamindary of Benares to Cheyt Sing; namely, that it was to draw after it both an acquisition of revenue and military force to our Government—that force which, under the circumstances of Government, both the members of the Board thought it was fit to call for. He says—

His opinion in 1778.

"An acquisition of revenue and military force I suppose to have been annexed to the grant of the zamindary of Benares and Gauzepore to the Company. Any military establishment independent of the English administration in the heart of the Company's dominions may, in the time of danger, be turned against those interests which under another policy it would protect. I have long regarded the military establishment of Benares under the Rajah's native officers, and not subject to the discipline, command and regulation, of our own battalions, as a defect. I, therefore, most heartily agree to the present proposal for three disciplined battalions to be kept up and paid by the Rajah; and sincerely hope that the Company will direct that the whole force of Benares and Gauzepore under the Zamindar be placed upon the same footing as the regular military force of the Presidency." *

This was the opinion of Mr. Barwell at that time; not merely that Cheyt Sing should be required to contribute his share to the burthen of the war, by consenting to the establishment of three regular battalions of sepoys, but that the whole military force which belonged to the Raja should be put under the command of the Presidency and disciplined by European officers — a measure which, of all others, undoubtedly would have been the most humiliating to Cheyt Sing, and that to which he would have felt the most repugnance. Comparing, therefore, the opinion of Mr. Barwell with that of Mr. Hastings—the one that a limited force ought to be put under the command of the Company, the other that the whole military force of the Raja should be put under the command of the Presidency and be disciplined by European officers — does not the inference of malice apply with infinitely greater force, in respect of that opinion, against Mr. Barwell than against Mr. Hastings, if it is to be drawn from this circumstance? And yet Mr. Barwell does not fall under the imputation of malice!

Statement of Mr. Hastings.

After all these opinions had been delivered, Mr. Hastings once more comes forward, and he then distinctly states, for the information of the Board, for the information of the

* Extract of Secret Consultation, 9th July, 1778.—Printed in the "Minutes of the Evidence," p. 67.

court of Directors, and for the information of his Majesty's Ministers, to whom the information, under the Act, was to be communicated, the grounds and reasons upon which he thought fit to propose that this demand should be made; and he states them in this way:— 11 JUNE 1792.

"I agree to the question in the original form of it; deeming it a right inherent in every Government to impose such assessments as it judges expedient for the common service and protection of all its subjects; and we are not precluded from it by any agreement subsisting between the Rajah and this Government."

Your Lordships, therefore, perceive that, in the year 1778, the right was put by Mr. Hastings precisely upon the same grounds upon which it is now maintained at your Lordships' bar—with what efficacy it will be for your Lordships hereafter to decide—but upon these grounds, namely, that it is a right inherent in every Government, in times of public difficulty and danger, to call for supplies from those who are dependent upon it, their protection being, in fact, involved in the public protection, and, finally, that nothing had passed between the Raja and the Company which had put an end to that liability. These were the grounds that were stated at the moment of proposing this resolution, and of referring it to the court of Directors for their decision.

After this, your Lordships will find, in page 67 of the printed Evidence, that the Board came to this resolution:—

"That Rajah Cheit Sing be required in form to contribute his share of the burthen of the present war by the establishment of three regular battalions of sepoys, to be raised and maintained at his expence; and the Governor General is to write to him to that effect, to inform him of this resolution of the Board." Resolution of the Board.

Now it becomes material for your Lordships to attend to the manner in which the resolution is worded—"that he be required in form to contribute his share of the burden of the present war:" and, in consequence of the latter part of this resolution, Mr. Hastings did write to the Raja the letter I am now about to read to your Lordships. However, before I come to the letter which was the consequence of this resolution, I must take the liberty of stating under what peculiar circumstances it was that the Board did come to the resolution to require of Cheyt Sing that which is the object of it.

Your Lordships know that, previous to this time, intelligence had been transmitted of the designs of the court of Intelligence of war with France.

11 JUNE 1792. France: at this time the intelligence had been received from Mr. Baldwin that a war had taken place. In consequence of that intelligence, Mr. Hastings, as his duty made it incumbent upon him to do, brought forward a plan, which consisted of these distinct propositions: the six first relating entirely to the internal defence of the provinces; and the next proposing it as a question, whether an expedition should not immediately take place against Chandernagore. Among the six first, was a proposition to call upon Cheyt Sing for the three battalions of sepoys; and, such was the state of affairs at that time, in the opinion of every member of the Board, without exception, as I shall immediately point out, that they felt it necessary to act upon this idea, namely, the probability of an invasion of Bengal.

Measures defensive and offensive proposed by Mr. Hastings.

Demand made on Cheyt Sing in anticipation of an invasion of Bengal.

I beg your Lordships to retain in mind that the resolution to call upon Cheyt Sing, as a subject of the Company, to contribute to the public defence, was made under a state of affairs that made it the duty of every member of the Council to act upon the idea that Bengal would be immediately invaded. The moment the Board came to that resolution, the case is precisely the same as to the necessity of providing public supplies, whether it be a probable or an actual invasion; for, if the probability was such that it was likely to happen, it will hardly be said that the Board were not to take the same measures as if it afterwards had actually taken place. Your Lordships will permit me to refer you to the minute of Mr. Francis, in page 86 of the printed Evidence, subsequent to this resolution of the Board.

Proposal of Mr. Francis to raise fifty lacs by loan rejected.

I should previously state that Mr. Francis had brought forward a certain proposition, for the purpose of raising the sum of fifty lacs as a loan—a proposition in which, for reasons which are not necessary now to examine into, Mr. Barwell and Mr. Hastings dissented from him, conceiving that it would unnecessarily spread an alarm at the beginning of the war throughout the settlement, and which proposition, though Mr. Wheler agrees with him, was not carried. In answer to Mr. Hastings' minute, objecting to this proposition to raise the fifty lacs, Mr. Francis expresses himself thus:—

Invasion apprehended by Mr. Francis and Mr Wheler.

"The [supposition to which I have alluded is, that Bengal will not be invaded. On this principle we have augmented our army: on this principle we ought to provide such resources for supporting a war as cannot be affected by the events of the war itself. I was not unacquainted with the general state of our revenues, or the resources which we might reasonably depend on in a time of peace and tranquillity, though my reliance on estimates is by no means explicit. But the case of an inva-

sion of this country supposes a very different state of things, and, for my own part, I have no doubt it would be followed by a general failure in the collections. I would not trust the defence of Bengal, on which the existence of the East India Company, and, I fear, the public credit of the nation, may at this time depend, to any resources which we absolutely have not in our possession, especially when security may be purchased at an expense so very trifling that, in my judgment, it does not deserve] a moment's consideration."* 11 JUNE 1792.

This is the language of Mr. Francis; and your Lordships will find the same sentiment adopted by Mr. Wheler, in page of 1495 of the printed Evidence, and in which he states—

"I take this opportunity to declare that the above propositions"—that is the propositions of Mr. Francis—"as well for the defence of Bengal as for making the loan in question, meet with my entire concurrence and approbation."

This was the opinion of Mr. Wheler, corresponding with that of Mr. Francis, stating that the Board had expressly acted throughout, as to all their military and naval preparations, upon the ground of the impending probability of an invasion of Bengal. Your Lordships then, in this state of the argument, are to say, whether a resolution of the Board [calling] upon Cheyt Sing, in the hour of an impending invasion of their own provinces, which would have fallen in the first instance upon Benares, which is detached from Bengal and at a considerable distance from that—whether a resolution calling upon him to contribute to the public defence, under these circumstances, is not a resolution to be justified upon every principle of reason, law and policy; much less whether it is one in respect to which your Lordships can infer malice against the gentleman now at your Lordships' bar. Vindication of the resolution.

The argument, I say, on the behalf of Cheyt Sing must go this length—that he was not liable, in any case whatever, to contribute in the slightest degree to the defence and protection of the Government to which he belonged, even supposing an actual invasion of the provinces to take place; for I submit to your Lordships that there is no difference whatever between the measure a state is to adopt, in the hour of an actual invasion, and that which it ought to adopt provided they have come to a resolution that an invasion is probable. In that case they are to act upon it the same as if it were actual. They must contend that, supposing

* Printed in the "Minutes of the Evidence," p. 86.

11 JUNE 1792. Bengal actually invaded, it would be as much a subject for an impeachment of Mr. Hastings to call for this assistance from Cheyt Sing. Whether your Lordships will adopt it in that extent we shall hereafter have an opportunity to discover.

Further criminality imputed to Mr. Hastings.

The Charge, in this respect also, imputes other sources of criminality to Mr. Hastings. It states—first, that he did this under the pretence of a war of which he had no authentic accounts; secondly, that it was at a time when the public treasury was unusually full; thirdly, when no demands were made upon any other persons in similar situations.

Now, it seems to me that there are two ways in which that part of the Charge may be considered. Either it may be contended that it means this—that, supposing the right to have existed and the occasion for the exercise of the right to have been, generally speaking, proper, still it became improper, inasmuch as the war was not sufficiently authenticated—as the treasury did not require the demand to be made—and, if it did, the demands should have been universally made upon all persons in similar situations. In that way it may be urged—admitting the existence of the right, but that it was improperly exercised under the circumstances. Or it may be urged in this way—as a circumstance showing that which is the gist of the Charge, the malice of Mr. Hastings in having made the demand under the circumstances he did. Now, applied to each of these premises, let us consider what force or what truth there is in the Charge.

That he acted under pretence of a war.

In the first place, it is stated that he did it under the pretence of a war of which he had not received any authentic accounts; that is, that, such as the accounts were, it was the duty of Mr. Hastings not to have had recourse to measures of defensive preparation, even when the opinion of every member of the Council indicated the probability of an actual invasion of Bengal. The first intelligence which Mr. Hastings had received upon this subject was, perhaps, the best of all probable intelligence—that which results from the nature of things. In the state of affairs in this country, which at that time had long been engaged in a war with America, the event of a war with France had been long foreseen; it was, therefore, likely every day to happen. But, independently of that, your Lordships have now clearly and distinctly heard from a noble Lord that intelligence which he transmitted to Mr. Hastings and General Clavering, for

Authenticity of the intelligence received by Mr. Hastings.

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the purpose of their having recourse to measures of prevention and of public safety, in the year 1777. That intelligence was, I may venture to state it, of the most alarming nature, coming from His Majesty's ambassador then at the court of France—that he possessed certain intelligence of designs forming between Monsieur Sartine and three or four others of the French Ministers to make alliances with the different native powers in India, for the total overthrow of the British power there. That intelligence was accompanied with this alarming fact—that persons had been sent out to train and discipline the natives, in order that they might turn out to be better forces in the field against the English than they had ever been before that time. Here I pause, and put it to the honour and justice of every noble Lord who hears me—what would have been thought of Mr. Hastings, upon receiving this intelligence from the noble Lord who zealously and honourably stepped beyond the line of his duty, as he has told your Lordships, not having any regular authority for that purpose—what would have been thought if he had treated the intelligence with neglect—if he had said—"Well, all this is very true; this is a thing that has not happened. If I take any notice of this intelligence and make it a ground for public measures, it will be said I acted upon pretence of a war and nothing more, and in that respect I acted illegally and maliciously." I leave it to your Lordships to decide whether that was precisely the sort of treatment which the intelligence conveyed by the noble Lord in 1777 ought to have received.

But does not the case become infinitely stronger when your Lordships find that, within a few weeks after the arrival of that intelligence from the court of France, Mr. Hastings received a packet from Mr. Baldwin stating it as a fact, that intelligence had actually arrived to the French consul there of war having been formally declared between the courts of Great Britain and France? Then what does it result to, but to this—that, combining the intelligence received from these two sources with the probable danger that would be the result of not having recourse to measures of defensive preparations, still, if Mr. Hastings does act upon it, in respect of that measure his conduct is to be the subject of impeachment?

Inconsistency of the impeachment.

But this striking fact appears upon the face of the proceeding. I have already stated that the plan brought forward by Mr. Hastings consisted of two entirely different

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Omission of offensive measures in the Charge.

and distinct parts; the one being measures of defensive preparation merely, the other measures of offensive preparation. Now, my Lords, it happens very fortunately that, with respect to the one, it is made the subject of impeachment in this Charge, while the other is wholly omitted. Mr. Hastings called upon Cheyt Sing to contribute to the defence of the provinces, and therefore he is impeached. It is hardly necessary to state that an offence against the law of nations is most undoubtedly an offence against the law of the land. In the very same debate in which he proposes this measure with regard to Cheyt Sing, he also proposes—and upon that proposition the Board resolve immediately—to send a force against Chandernagore, which was captured in consequence of that resolution: so that we have now this glaring absurdity—Mr. Hastings is accused of a crime for taking defensive measures, because the intelligence was not sufficient to warrant them; but the intelligence was sufficient to warrant offensive operations to carry the seat of war into the enemy's country, and strip them of their possessions; and yet he is not accused of that which, if the information was insufficient, would be a still greater offence, because the intelligence might be sufficient to warrant them to make defensive preparations, when it might not be sufficient to warrant an attack upon the enemy's possessions! Therefore, there can be no foundation whatever for this allegation—that it was under the pretence of a war of which he had not received authentic intelligence.

But let that doctrine be distinctly and correctly stated, for the information of every Governor General in future—Mr. Hastings cares little what becomes of himself;—let it be known to every person to whom the safety and protection of any part of the British dominions may be intrusted in future — to your admirals and commanders-in-chief — to every civil and military officer—that, if he proceeds upon any ground short of absolute certainty, it will be imputed to him that he acts upon the pretence of a war from intelligence not sufficiently authentic, and in that respect his conduct will be considered as criminal. Whether that is the doctrine which your Lordships, not only as judges but as statesmen and politicians, will hold out to all those who are at this moment serving their country in distant parts, and will be put in a situation incapable of serving it hereafter, I leave to your own candid, liberal and noble, minds to determine.

Because Mr. Hastings puts the provinces in his charge in a state of defensive preparation, to guard against that attack, which, when it had fallen upon them it would have been too late to repel, it is thought fit by the Commons of England to impute to him that he had acted upon the pretence of a war, of which he had not yet received authentic intelligence. Your Lordships will now see whether the intelligence communicated by our ambassador was or not sufficient to make it a duty incumbent upon the Governor General of Bengal, in concurrence with every member of his Council, to put the provinces under his care into a state of defence. Supposing that a Mahratta invasion had actually taken place, and that Mr. Hastings had not put the provinces into a state of defence, what would have been thought of him if, upon an impeachment for having lost the province of Bengal intrusted to his charge, the noble Lord who gave the intelligence—transmitted it in 1777—had been examined as a witness to prove the fact, and that it had come out that, notwithstanding that information, Mr. Hastings had recourse to no measures whatever for defensive preparation, and that for want of those measures the province of Bengal had been lost by the invasion of the Mahrattas? So that, let him act any way—put the province into a state of defence or omit it —in either case he would be impeached. Is this consistent with the honour, with the common sense, with the justice of a great nation?

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Injustice of the charge of acting under the pretence of a war.

Having said so much upon the subject of the pretence of a war, I now come to the second ground, and that is—that the treasury at this time was unusually full. I admit the fact. But was that a reason, upon the appearance of a foreign war, when the establishments were everywhere to be increased, not to impose fresh taxes? We have lately had rumours of war; we have lately had probabilities of war in this country; we have heard of armaments against the court of Russia; we have heard of armaments against the court of Spain; but it would sound rather oddly as an argument for an impeachment of a Minister of this country, that he had imposed taxes, not because there was a war, but because there was a probability of war. And, therefore, unless the honourable Managers can induce your Lordships to go this length—to decide that, in the prospect of a war, no measures of preparation are to be taken, this accusation falls to the ground as the most futile charge that can be.

Condition of the treasury.

It is impossible that the business of a great kingdom can

Necessity of obtaining

11 JUNE 1792. be conducted by not raising supplies till the instant the money is to be paid into the hands of the soldiers or sailors who are to fight our battles: that is not the way in which a great empire must be conducted. Whatever was the state of the treasury—whether full or empty—it has no relation whatever to the present subject; because Mr. Hastings contended that, in respect to possessions which Cheyt Sing held as part of the public territory, he was liable to contribute his share to the public defence. But what is the language of Mr. Francis upon this occasion? He, at least, did not think that the state of the treasury was sufficient to induce the Board not to make the demand; because your Lordships find that, on the contrary, he proposed the sum of fifty lacs should actually be borrowed; that we should trust nothing to the uncertainty of estimates; that the probable consequence of a rebellion would be a failure of the collections, which would be a prejudice not only to our possessions but to the honour of Great Britain. In the course of the ensuing year, your Lordships know, so far from the treasury being actually full, there was a deficiency to an enormous amount, from the unavoidable demands which had been made upon it in the course of that very year.

supplies in advance.

Opinion of Mr. Francis.

Deficiency in the ensuing year.

It is then said that no demands were made upon persons in similar situations. Now it seems to me that this part of the Charge is at once negative and affirmative. In the first place it states that no demands were made. Next, it states that there were persons in similar situations—upon whom no demands were made. Nothing can be more clear than this—that it is incumbent upon the Managers, if Mr. Hastings be criminal in having made a demand upon this man and not upon others in similar situations, having averred that fact—that there were others in similar situations—to point out who those other persons were. But, from the hour in which this Charge was first framed in the House of Commons to the moment when it was placed on your Lordships' table, and from that hour down to this, there has not been an attempt to produce any evidence of any sort whatever that there was any one person in the situation of Cheyt Sing upon whom, as upon him, at that moment, it was possible for the British Government to have made a demand.

Imputation of injustice, in confining the demands to Cheyt Sing.

No persons proved to have been in similar situations.

That there were other persons in similar situations in one sense there can be no doubt. He was a zamindar and nothing more, and there were many zamindars; he was a Raja, and there were many Rajas. But was there any one person who held possessions under the British Government yielding

a revenue of 50 lacs of rupees, and for which he paid only to the Company a revenue of 22 lacs? So far from that being the case, your Lordships know that it is made one of the express charges against Mr. Hastings that, such was the state and condition of the different renters in the provinces at that time, they were all reduced to a state of poverty and ruin. Then granting, for the purpose of the argument, that to be true which the Charge states—there was not one in that situation in which alone the demand was made upon Cheyt Sing. The zamindary that he held was in a situation liable to the incursion of the Mahrattas, a district which yielded to him an annual surplus of 15 lacs of rupees and upwards, after all the revenue paid to the English and the expenses of his government were discharged. And, though it was not incumbent upon me to distinguish his situation from that of any other person, because the Managers ought to have proved that which they have alleged, yet I have taken the liberty to point out those circumstances which made a difference in his situation. Therefore, in whatever light these facts may be considered, whether as circumstances entering into the constitution of the crime, or whether as facts from which the malice is to be inferred, there is no foundation to consider them either as criminal or as proofs of malice. 11 June 1792.

Recapitulation.

If these are to be considered either as criminal in themselves, or as proofs of malice, with how much more force do they apply against the conduct of Mr. Francis than against the conduct of Mr. Hastings! Mr. Francis at that time was of opinion, according to the honourable Managers, that we had no right to make the demand. They say that the public treasury did not require it. They say that there was not sufficient intelligence of a war. They say that there were no demands made on persons in similar situations. Then how much ought all these facts to have operated upon the mind of Mr. Francis, when there was no immediate necessity to induce him to assent to that demand which, according to his own construction of the rights of the Raja, was an invasion, an infringement, of those rights! Therefore I say, considered as evidence of malice, they prove malice, if they prove it at all, with infinite more force against the one than against the other. But I have already stated that it is not to be imputed to either. Each acted according to the best of his judgment upon the occasion. Upon what principle is it that Mr. Hastings can be considered as having

11 JUNE 1792. acted upon a malicious motive in those respects, when it did not occur to Mr. Francis any more than to himself, to say at the time—"This intelligence is not sufficiently authentic; the treasury is full; and there are other persons in similar situations?" So that, upon the whole, the conduct of Mr. Hastings as to this ground is the same as of the other members, and there is no one motive of malice which can be adduced against him which does not apply to them equally.

My Lords, I have now gone through the circumstances under which the first demand was made. Your Lordships recollect, it was part of the resolution of the Board that Mr. Hastings should write a letter to Cheyt Sing to inform him of this demand.

Letter of Mr. Hastings to Cheyt Sing on the subject of the first demand.

I will now state what this letter was which was written under the orders of the Board. Your Lordships will find it in page 1501 of the printed Evidence:—

> "War having been declared between the courts of Great Britain and France,—by the former on the 18th of March or 18th of Suffer, [and by the latter on the 30th of March or 1st of Rubbee-ul-awal 1192 Nejerll, I am to request of you, in my own name and that of the Board, as a subject of the Company bound to promote their interest on every occasion, to contribute your share of the burden of the present war, which will equally affect] your interest and ours."

This letter is written by Mr. Hastings, by order of the Board. Now, let us see what are the facts which this letter asserts, and asserts, not upon the part of Mr. Hastings only, but on the part of every person who concurred—who sat in the Council on that day. In the first place, it states distinctly that he is a subject of the Company. Next, that as such he is bound to contribute his share of the burden of the present war; and, in respect of his liability to that obligation, they call upon him to do it.

Distinction attempted to be drawn between the conduct of Mr. Francis and Mr. Hastings.

And here, my Lords, I would pause for a moment, in order to point out to your Lordships that the honourable Managers, feeling that it was necessary, if possible, to make some distinction between the conduct of Mr. Francis and the conduct of Mr. Hastings, have endeavoured to do it upon this ground:—they have stated that Mr. Francis acquiesced in the demand, because he considered that it was to be put to the Raja as a thing that he was to consent to; and therefore he had no objection to take the five lacs which were to be demanded, provided the Raja was willing to give them. The honourable Manager who opened the Evidence upon this Article of impeachment stated, distinctly

and specifically, that the conduct of Mr. Francis stood distinguished from the conduct of Mr. Hastings upon that ground—that he put it to the Raja as a thing for his consent and not as a claim of right. Is it possible, my Lords, to maintain, considering all the circumstances of this case, any such distinction whatever between the conduct of these two gentlemen? What! is this the language in which a man is asked to give a sum of money which he is not otherwise liable to pay? Do those who request favours assert to those whom they are asking that they have a right to demand what they ask—that they are subjects, and as such, liable to the obligation of contributing their share of the burden of the war? What is that but saying, in other words, that it is an obligation, in respect of which he has no choice? And yet in this letter Mr. Francis, as one of the members of the Board, concurred. I will venture to say that, if we pursue the subject still further downwards, I shall be able to make out, in a manner infinitely more clear, to the satisfaction of your Lordships, from all the subsequent consultations, that no other idea, in fact, did exist in the mind of Mr. Francis. 11 June 1792

Acquiescence of Mr. Francis in the demand.

I think I observed a sentiment of disapprobation from some part of the Court to the assertion that Mr. Francis did put this as a claim of right to the Raja, and not as a matter to which he was to consent, in respect to his having signed this letter. Now, I think I understand that, and I will distinctly state what I conceive it to be. I admit that it by no means follows that Mr. Francis approved the sentiments which are to be found in every letter to which his name is put, because I believe it to be the course of the service that, after a letter is prepared by a resolution of the majority of the Board, the names of all are put to it; but I mean to show upon other grounds that Mr. Francis put this as a matter of right and not of favour, which grounds were distinctly stated.

But, before I go upon the other grounds, on which I think there is no difference in this respect between the conduct of Mr. Francis and Mr. Hastings, I will just state what follows in the course of the same consultation. But, even if I were, for the sake of the argument, to concede that to the honourable Manager which he contends is the ground of the conduct of Mr. Francis, I am then to understand it in this way—that the resolution of the Board by which the first demand was made was not a claim upon Cheyt Sing, but it

11 JUNE 1792. was a thing that was stated to him as a matter to which he might or might not consent, as he thought fit; therefore it was a sum of money not taken upon the ground of a claim of right, but upon a consent to be given to it upon the part of the Raja. I have endeavoured to show that no idea can possibly be more absurd; because, though Mr. Francis did not put his name, perhaps, to this letter, or if he did it was under the circumstances that I have stated—merely, that he was bound to sign every letter to which the majority of the Board had acceded—yet your Lordships will find this sentiment stated not merely in that letter, for that letter does but adopt the language of the resolution of the Board to which Mr. Francis undoubtedly had assented.

Therefore, taking up the conduct of Mr. Francis not upon the ground of this letter but of the resolution, I say he asserted to Cheyt Sing that he was a subject of the Company, bound to contribute his share to the burden of the war; and yet the honourable Manager puts it that it was stated to the Raja for his consent. Obligation supersedes the necessity of consent; that is the very nature of it. He was bound to contribute his share of the burden of the war or he was not. If he was bound, it would be absurd to contend that his consent was necessary. If he was not bound to contribute his share to the burden of the war, I leave it to the friends of Mr. Francis to explain how, contrary to the fact, he could concur in a resolution asserting that to be the case, and hold it out to the Raja as the very principle upon which he was bound to comply with the resolutions of the Board.

But here again I am unwilling to differ with the honourable Managers when I can possibly agree with them. I might safely concede to the honourable Manager the argument he means to establish. I might admit that, in point of fact, it does appear that Mr. Francis only means to ask as a matter of favour a sum of money of the Raja, but not to claim it as a right. But still I ask, in what does the distinction exist between Mr. Hastings and Mr. Francis in that respect? How is Mr. Francis to be judged of, in respect of what he meant to do, but by what he said? Where has he expressed himself but in the resolution of the Board? Then, if the resolution is to be construed to mean a request and nothing more, as to Mr. Francis, I should be glad to know how the same resolution can be construed into a demand on the part of Mr. Hastings, so as to be construed into a sort of extortion? If it is a request on the part of one member, it

Responsibility of Mr. Francis.

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is a request on the part of all. Therefore, I say that the right honourable gentleman has himself, in setting up a defence for Mr. Francis, established a complete answer on the part of Mr. Hastings to the Charge; because, if it is only a request of the Raja and of that which he consented voluntarily to give, then it ceases to be that which the Charge alleges, namely, a sum of money taken from him against his own consent. It cannot be construed to be taken with his consent in the case of Mr. Francis, and against his consent in the case of Mr. Hastings. You must construe it in the same manner for the one as for the other. Then, I say that, if there be any solidity in the distinction taken by the honourable gentleman, it applies equally in the case of Mr. Hastings as of Mr. Francis; but, if there is no solidity in the distinction, then it stands precisely on the same ground—a request as matter of right on the part of Mr. Francis, as it was on the part of Mr. Hastings. In pursuing this matter still further, in the course of the several consultations, this will appear, if possible, still more clear.

Assent to the demand by the wakil of the Raja.

Your Lordships will find that, in consequence of the resolution of the Board that this demand should be made upon the Raja, besides this letter having been written which I have just now read, a meeting took place between the wakil, or the agent of the Raja, who was in attendance at Calcutta, and Mr. Hastings; and Mr. Hastings states, in the course of that, a fact which is afterwards authenticated by Mr. Auriol, that he explained to the wakil the nature of this demand; he told him how conformable it was to the practice of all governments in times of public danger; and that he received, upon the part of the wakil, in the name of his master, an unqualified assent to comply with the demand for that year.

Dispute as to the amount of the subsidy.

It afterwards turned out that there was some little difference with respect to the sum to be paid; Mr. Hastings contending to fix it at five lacs, the Raja at three; and, Mr. Hastings not giving way, then the acquiescence was limited and restrained to one year only. In consequence of that, the Board, undoubtedly, had to expect that under their requisition this sum would have been paid. But your Lordships will find that, very shortly after—I believe, upon the 17th of August, 1778—it is in page 73 of the printed Evidence—Mr. Hastings brings a letter before the Board which he had then received from the Raja himself; and he states that, having called upon the Raja's wakil for an expla-

11 JUNE 1792. nation of his master's further sentiments upon the subject of it, he has received the following answer from the wakil, being the substance of a long conversation—that his master was at all times ready to pay obedience to the commands of the Board, and to afford every proof of his attachment to the Company, and that the Raja had authorised him to declare his acquiescence in the requisition of a subsidy equal to the expense of three battalions of sepoys, for the service of the war.

Renewed assent on the part of the Raja.

Now, it is extraordinary that, in the first moment of this being communicated to the wakil of the Raja and to the Raja himself, there is no objection whatever made to it on the part of either of those persons. Neither of them pretend that, either by the general constitution of Hindustan, nor in respect to particular agreements which had passed between him and the Company, he was not liable to demands of this sort. There is no objection made on the part of the wakil or the Raja. Your Lordships will find under what circumstances, after it was first thrown out by another person and taken up by him, he makes any objection. But I rely upon that as a pretty striking circumstance that, instead of feeling it as an unusual and unprecedented demand, which he was most likely to do in the first instance of such a demand being made, he, on the contrary, acquiesced in the demand. In consequence of this assent of the Raja, the wakil contended for fixing it at the sum of three lacs of rupees. The Governor General told him it could not be less than five; and received his consent, in his master's name and in virtue of the authority which he derived from the Raja, to the payment of that sum for one year, his authority extending no further. It then follows:—

Consent of the wakil to a payment of five lacs for one year.

"The Governor General is of opinion that as the Raja's consent has been expressed with such a limitation"—

meaning by his consent his recognition of the right, for it is hardly possible that, after they had asserted the right, his consent should be necessary—

"the payment of the subsidy ought not to be left subject to the contingencies which the course of the year may produce, but be immediately demanded. He computes that the amount of three battalions of sepoys on double batta, exclusive of tents, arms, and contingent charges, will amount to four lacs, 26,300 rupees."

Proposition of Mr. Hastings to require immediate payment.

And on those grounds Mr. Hastings directly moves,—

"That the subsidy to be paid by Rajah Cheit Sing, for the maintenance of three battalions of sepoys during the course of the war, be fixed

at the annual sum of five lacks of Muchildar rupees; and that he be immediately required to pay that sum into the hands of Mr. Thomas Graham." 11 JUNE 1792.

Now, my Lords, here, at least, we get to something like certainty with respect to trying his conduct upon the ground of this doctrine of consent. Here, in the first instance, we have a conversation upon the part of the wakil complained of by Mr. Hastings, because he would only assent to the demand for one year. We have also a complaint, on the part of Mr. Hastings, that the Raja had himself eluded assenting to pay the demand in his written answer. Therefore I am intitled to say that, if ever the idea of consent had been that upon which any member of the Board had proceeded, that ground had completely failed in this respect, because the complaint on the part of Mr. Hastings was, that he eluded it in his written answers.

Acquiescence of Mr. Francis.

How did Mr. Francis act? Did he then come forward and say, as the right honourable gentleman has since said for him—"I made this demand upon the ground of consent only; and, inasmuch as he has not given his consent, I abandon the call upon him." No! The proposition on the part of Mr. Hastings is:—

"As the Rajah's consent has been expressed with such a limitation, and eluded in his written answers, the payment of the subsidy ought not to be left subject to the contingencies which the course of the year may produce, but immediately demanded." *

Mr. Francis says, "I acquiesce." In what? In demanding the immediate payment!

"I acquiesce, though, in my own opinion, it would answer as well to us, and be less distressing to the Rajah, if the subsidy were added in equal proportions to the monthly kists of the tribute."

And yet, after this, it is to be contended that, on the part of Mr. Francis, it was a request only of the Raja, and that it was a demand on the part of Mr. Hastings, making all the difference of guilt or innocence in their respective conduct! But that is all Mr. Francis says—"I acquiesce, though, in my own opinion, it would answer as well to us, and be less distressing to the Raja, if the subsidy were added in equal proportions to the monthly kists of the tribute." He acquiesces in the proposal made on the part of Mr. Hast-

* Extract from Bengal Secret Consultation, 17th August, 1778.—Printed in the "Minutes of the Evidence," p. 73.

11 JUNE 1792. ings, which was to be attended with no possible advantages to the English Government, because, he states, it would answer as well if paid at a distant time, and though, at the same time, he states that it would be more distressing to the Raja!

I hope it will not be contended on the part of Mr. Francis, that he meant the Raja should pay a sum of money in that way which would be most distressing. Nothing can be more clear than this—if you ask a sum of money of any man which he is not bound to give, and take it from him upon the footing of consent, you must take it in the manner, and at the time when, he chooses; you can no more take it at a different time, and in a different manner, against his consent, than you can take it altogether against his consent. And yet nothing can be clearer than this—that, so far from consenting to pay money immediately, the Raja was for eluding the payment of it altogether, and Mr. Francis acquiesces in the proposition for the immediate payment of this sum. Now, after this, I should be glad to know how, in point of common sense, it is possible to contend that there is any distinction whatever between the conduct of Mr. Hastings and Mr. Francis; and that one put it to the Raja as matter for his consent, while the other insisted upon it as a right?

Conduct of Mr. Francis and Mr. Hastings compared.

Pursuing this subject still further, I should be glad to know whether the number of criminal inferences would not be considerably increased in point of force, if Mr. Hastings had conducted himself, upon this occasion, in the manner Mr. Francis did? What would have been the argument of the honourable Manager, if he had come forward and said—"I am of opinion that it is totally immaterial to this Government whether they receive it at one time or another; but I think it would be more distressing to the Raja to pay at one time than at another, therefore I propose the Raja should pay it sooner, for the purpose of distressing him?" Would it not have been asserted that Mr. Hastings stood, upon his own confession, upon the ground of enmity towards this man, and that this was a description of malice, and nothing more? So that here, pursuing the contrast of Mr. Hastings and Mr. Francis, whenever the subject fairly occurs at the Board, it happens singularly that in the case of the one the evidence is much stronger to supply the inference of malice than in the case of the other, under circumstances that I will not call to your Lordships' recollection; it having been matter of express lamentation by one of the honourable

Managers, that the gentleman of whom I am speaking was not one of the Managers to conduct the impeachment at your Lordships' bar in defence of those very acts. 11 June 1792.

I trust it will be in no respect felt that I mean to impute to Mr. Francis that which would be utterly inconsistent, I have no doubt, with his general character—which would certainly be repugnant to the particular circumstances of this case—any improper or unworthy motive whatever; much less any malice against the Raja, for whom he could not possibly entertain it. All I am endeavouring to point out is, the danger of condemning men upon these sorts of inferences; and the sort of partiality which would condemn one man as the subject of impeachment, while it leaves out against the other evidence which is increased in the strength, I will say, of the proportion of twenty to one.

Immediate payment required of Cheyt Sing.

Mr. Francis having acquiesced, a letter was written to Cheyt Sing requiring a payment of this sum immediately into the hands of the Resident. Your Lordships will find the answer in page 74 of the printed Evidence. Mr. Graham informed the Board that he had made this demand of the Raja; that he could not procure it; and, he states, that he requests him to receive it by monthly payments—the idea thrown out by Mr. Francis in his minute:—

Ineffectual application of Mr. Graham.

"I acquiesced, though, in my own opinion, it would answer as well to us, and be less distressing to the Rajah, if the subsidy were added in equal proportions to the monthly kists of the tribute."

Immediate payment could not be procured, but in the place of it there came a letter from the Raja himself, which, upon this occasion, Mr. Hastings lays before the Board.

Plea of inability urged by Cheyt Sing.

I will not trouble your Lordships with hearing that letter read at length; the substance of it, no doubt, is perfectly fresh in your Lordships' memory. He endeavours to excuse himself upon the plea of inability alleging that he is not in a situation, upon the commencement of a war in India between the English and French nations, from the state of poverty to which he was reduced, to pay five lacs of rupees. Your Lordships will hardly expect that Mr. Hastings was to be the dupe of such arts; and, accordingly, upon the receipt of this letter, Mr. Hastings moves,—

Motion of Mr. Hastings to persist in the demand.

"That orders be written immediately to Mr. Graham that he do, on the receipt of them, demand of the Rajah in person the payment of the entire sum of five lacks of rupees in the space of five days, and declare to him, in the name of this Board, that his refusal or neglect to complete the payment within that time shall be deemed equivalent to an

11 June 1792. absolute refusal; and that he be forbidden, in that case, to hold any further intercourse with the Rajah, until he shall have advised us of the particulars of the Rajah's conduct in this instance, and receive our orders in consequence."

The Raja's consent to the payment questioned by Mr. Francis.

Now I admit that there does, for the first time, appear something like an idea of consent floating in the mind of Mr. Francis; for, upon this proposal of Mr. Hastings to demand immediate payment of this sum, Mr. Francis says,—

"I beg leave to ask whether there be any letter from the Rajah himself to the Governor General, in which his consent to pay the five lacks in the manner agreed to by the vakeel is expressed, or the vakeel's engagement to that confirmed?"

From the question asked, whether there be any letter in which consent is expressed, it does look, undoubtedly, as if Mr. Francis conceived that consent was necessary to be given; else he was inquiring about that which had nothing to do with the case. So far, I think, in point of candour, it is necessary to admit. We shall see how Mr. Francis next acts under these circumstances. Mr. Hastings says, that—

"With respect to the letter for which Mr. Francis asks, all the Rajah's letters will be found in the book of Persian correspondence to which I refer; but I well recollect that assent given by the vakeel was expressed in terms the most peremptory that could be conceived, confirmed by an oath, or his own life pledged for the performance of it. My minute was drawn up from heads of what passed in conversation with the vakeel: and, when it was explained to him by Mr. Auriol, he was very desirous of correcting a part of it, which made the acquiescence of the Rajah appear too general, and that it might be specifically limited to one year; his power, he added, extended no further."

Mr. Auriol then comes forward, and confirms all the circumstances of this conversation between the wakil and Mr. Hastings, as related by the latter. Upon this, Mr. Francis states,—

"I have no sort of doubt of the reality of the engagements made by the vakeel; the question is, whether they are acts of the Rajah, or made by sufficient authority from him."

Here, again, distinguishing between the Raja and the wakil, for the purpose, as it would seem, till they get further into this debate, of absolving the Raja from that consent which, Mr. Francis seemed inclined to be of opinion, the Wakil had given without any authority. He then states,—

"If the vakeel had even a letter of credence relative to the point in question, it must appear on the Persian correspondence, and I desire the secretary will read it."

No such letter, however, did appear upon the Persian correspondence; and your Lordships will afterwards find, in page 76 of the printed Evidence, these words coming from Mr. Francis:— 11 JUNE 1792.

"It appears that the engagements made by the vakeel have not been confirmed by the Rajah, and that the vakeel had not even a letter of credence from his master. I know the temper of black servants too well to punish their principals for any acts done by them, or even to hold them bound by such acts, if not expressly or virtually confirmed by themselves."

Thus far, then, at least, we get, that clearly, upon the part of the Raja, there was no consent in person, for it had been eluded in his letter; and that was the complaint. And now Mr. Francis is completely satisfied that there was no consent on the part of the wakil that could bind him, because he discovers that the wakil had not any authority which could enable him to bind the Raja. Then the conclusion in Mr. Francis's mind was, unquestionably, after a full inquiry into all the circumstances, that there was no consent whatever given either in the Raja's letter, or by the wakil, with sufficient authority on the part of the Raja.

Question of right reverted to by Mr. Francis.

Now, let us see how Mr. Francis acts under these circumstances. Being satisfied—the result of his own inquiry—that there was no consent whatever given to this demand, he seems again to have resorted to the question of right, and also to have considered the fact of consent. And your Lordships will find, in page 76 of the printed Evidence, that Mr. Francis expresses himself thus:—

"There is no question but the Rajah must yield to the power of this Government, and I shall be as ready as any member of this Board to support its authority as long as its power is directed by justice. I did from the first express"—

What?—

"a doubt whether we had strictly a right to increase our demands upon the Rajah, beyond the terms which we originally agreed to give him, which he consented to, and which, as I have constantly understood it, were made the fundamental tenure by which he held his zamindary."

Mr. Francis then, in the conclusion of a very long minute, in page 77, says:—

"I only mean to show that I adhere to my principles, and that the doubts which I have constantly expressed of the justice of increasing our demands upon the Rajah, which if done at all, may be done *ad libitum*, were not ill founded."

Therefore, the utmost length to which Mr. Francis could get his mind to go, under the best consideration that he

11 JUNE 1792. could give of the subject, was to doubt of the right of the Board to make this demand—a demand which is now contended on the part of the honourable Managers to be so notoriously against all right, and so flagrant a violation of treaty, that it is impossible for any man not to infer a direct proof of malice on the part of Mr. Hastings. Yet such is the conduct of Mr. Francis, who had been privy to all these transactions, had been debating and commenting upon these different statements, that he was in a state of doubt—that he has only argued at great length to show that his doubts were not ill founded!

I hope it will not be imputed as any very great offence on the part of Mr. Hastings that he was not convinced by these arguments of Mr. Francis, such as they were. He began with being in doubt; he goes through a long course of argument merely to show that his doubts were not ill founded. It will not be imputed to Mr. Hastings that he did not pay great respect to the arguments of Mr. Francis, when it appears they could not convince himself; for Mr. Francis acquiesced in this demand. But it may be said he acquiesced in it because he expected consent would be given to it. Then let us see how Mr. Francis acts when he is convinced consent would not be given to it. Does he say, "I am now satisfied he will not consent, and, therefore, as my acquiescence was upon the expectation of his consent, I will not give it my consent any further?" Now let us suppose that, upon this occasion, Mr. Hastings had adopted every argument thrown out by Mr. Francis. Let us place Mr. Hastings in the situation of having acted under the advice of Mr. Francis. I will suppose him to be willing to do precisely that which Mr. Francis had pointed out to him. Mr. Francis doubts about the right, and he is satisfied there is no consent; then what are the Board to do? Hear the language of Mr. Francis; he says thus:—

Inconsistent conduct of Mr. Francis.

"I do not mean by what I have said that the Board should give up the demand which they have already thought fit to make of the Rajah. That resolution being passed, it only remains for us to take care that it shall be carried into execution without harshness or violence."

So that the fact stands completely established that, after all this inquiry, which was only to ascertain that there was no consent on the part of the Raja, after all this expression of doubt and argument to justify doubt, it ends in this—not in advising Mr. Hastings to abandon the demand he had originally made, it only ends in this—

"God forbid I should be understood, by anything I have said, to imply that the Board should give up this demand, they having made it!" 11 JUNE 1792.

Then was I warranted in saying that, if Mr. Hastings had acted upon the advice of Mr. Francis on this occasion, that advice would have placed him in the situation in which he now stands impeached by the Commons of Great Britain in respect to the demand in 1778, because the advice of Mr. Francis was to persist in that demand which had been once made. But it would have placed him under circumstances of more criminality than anything that can attach upon him at this moment, because it would have placed him in this situation—that he adopted the doubt of Mr. Francis as to the right, and the conviction of Mr. Francis that no consent of the Raja had been given to it. Then it ends in this, that, after all, Mr. Francis was of opinion that this demand should still be insisted upon; but Mr. Francis states this at the same time:— Modification of the demand proposed by Mr. Francis.

"My opinion is, therefore, that the liquidation of the present extraordinary demand upon him should be settled by kistbundy, and that he should be assured at the same time that this Board will not make any further demand upon him."

Afterwards he states—

"It is generally true that a resolution of Government once passed should be supported; but, where the rights of others are concerned, it is only true with this proviso, that such resolutions are not directly contradictory to the principles of justice, or to the voluntary and fundamental engagements of the Government itself."

Now it seems to me a most extraordinary doctrine to maintain, that, if the demand could be justified in 1778, no further demand should be made upon him; or that, if it could not be justified in any future year, yet it should be persisted in merely because it had been made in 1778. Because here, again, Mr. Francis is inconsistent with himself, and acts in direct repugnance to his own principles; for he states that, though "the resolution of Government when once passed should be supported, yet it is only true with this proviso, that such resolutions are not directly contrary to the principles of justice." Then, where they are directly contrary to the principles of justice, one should have thought, upon the reasoning of Mr. Francis, that there was a reason for revoking the resolution; therefore I am intitled to argue that he could not at this moment consider these as resolutions contrary to the principles of justice, because he was clear that this resolution ought not to be revoked.

If Mr. Francis had been at this time satisfied that there

11 JUNE 1792. was no foundation whatever for the right, and no propriety in making the demand, the money had not been received—it was not too late to recede. But, on the contrary, if the demand was conditionally made and depended on the Raja's consent to it, here was an opportunity given to Mr. Francis himself, who stated that he came forward under a state of doubt of mind originally, no longer to assent to that demand; yet he assents to the demand as originally proposed, and states an opinion that it should be persisted in, and after having been once made—"the only thing to be done is, to take care that it shall be carried into execution without harshness or violence." Mr. Francis seems here to have corrected what he did on the former occasion; for there he seems to have been desirous of doing that which would be distressing to the Raja without any advantage to the Government; but here he is desirous there should be no harshness or violence in enforcing the resolution of the Board; that resolution being that the Raja should pay the money immediately.

Opposition of Mr. Francis to the demand.

We now come to the result of this debate; and here Mr. Francis states—

"Understanding that the instant payment of the five lacks is still to be demanded in the terms of the first proposition,"—instant payment—"and that no relaxation from those terms is intended, I am against the motion."

So that Mr. Francis in this debate did not oppose the demand itself, but merely the demand of immediate payment. He was of opinion that the money should be taken from the Raja, but, as we did not want it immediately, that it should not be required immediately; and upon that ground and that only he opposes the resolution brought forward by Mr. Hastings. Mr. Wheler, who was in the habit generally of acting with Mr. Francis, appears to have been of a different opinion upon this occasion; separating from his political friend, Mr. Francis, with whom he was in the habit of constantly acting, he is for the question—for the demand, in the manner brought forward by Mr. Hastings. Mr. Barwell concurred with them. So that, in the end, there was no difference of opinion between any two members of the Board as to the propriety of persisting in the demand: the only difference was as to the time of payment. In that part of the resolution Mr. Francis stood single; it had the assent of Mr. Barwell, Mr. Wheler and Mr. Hastings.

The demand supported by Mr. Barwell and Mr. Wheler.

And here again, upon the ground of malice, all the inferences that apply against the conduct of Mr. Hastings

apply with precisely the same force against the conduct of Mr. Wheler and Mr. Barwell, who agree with him in the proposition to the full extent in which he stated it. In consequence of this, a letter was accordingly sent to the Resident to demand immediate payment of the five lacs; and I believe the honourable Managers have proved, in page 78 of the printed Evidence, that the completion of the payment of the five lacs was upon the 10th of November, 1778. My Lords, these are all the circumstances which attended the first year of this demand—the year 1778.

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Payment of the five lacs in November, 1778.

I now come to the transactions which are stated as criminal, and as having happened in the year 1779. The Charge states that, in the year 1779, this demand was again renewed; but it states it under these peculiar circumstances, which did not characterise the former demand:—first, that the payment was extorted by means of a military force; and secondly, that the sum of 2,000*l.* was extorted under pretence of paying for that force. These are the circumstances which characterise the demand in 1779, beyond that in 1778. But there are circumstances which belong to the demand in the year 1778 which also cannot apply to the demand in the year 1779.

Renewal of the demand in 1779.

Circumstances of alleged extortion.

Your Lordships perceive, the circumstances to which I allude are these:—that the demand was stated to have been made, in 1778, under the pretence of a war. Undoubtedly, actual intelligence of the war had arrived before the year 1779. It was also stated in 1778, that the treasury was unusually full. It is in evidence that in 1779 there was an actual deficiency in that respect. The two demands differ in these respective years. Upon the 19th of July, 1779, then, the war still continuing, the public treasury being in a considerable degree exhausted, it will hardly be said that, if it could be upon any principle of public policy, or expediency, or justice, proper to make the demand in 1778, it should not be, if possible, still more proper upon general grounds to repeat the demand in 1779, when the same necessity for it existed, only with the increased force in the latter year that did not exist in the former.

Increased necessity for the demand.

In the year 1779, on the 19th of July, your Lordships will find these persons present at a consultation—Mr. Hastings, Mr. Francis, Mr. Wheler—Sir Eyre Coote indisposed. The Governor General delivers in the following minute:—

"It having been resolved, in the secret consultation of the 9th of July, 1778, that Rajah Cheit Sing should be required in form to contribute

Motion of Mr. Hastings.

11 June 1792. his share of the burthen of the present war with France by the establishment of three regular battalions of sepoys, to be raised and maintained at his expense, and the amount of the subsidy fixed by the Board in consultation of the 17th of August following, and agreed by him to be paid for one year, being five lacks of Mucklidar rupees, as the year is now expiring, I move that he be at this time required to contribute the like sum, as his share of the expense of the war for the current year."

Upon this proposal, after all the discussions that had happened in 1778 being renewed in 1779, one would suppose that it was extremely natural for Mr. Francis to have come forward and to have spoken thus—"In the former year I made the demand, and I persisted in it because made, but at the moment that I persisted in it because made I was satisfied that it ought not to have been made; and I then proposed in 1778, prospectively, that no such demand should be made in future." Mr. Francis, a year before the demand is made, proposes that no such demand should be made in future. Therefore it is natural to suppose we shall find him coming forward with great indignation to oppose the renewal of this demand. Does Mr. Francis do this? The honourable Managers will have extreme ingenuity—much more than belongs to me—if they are able to discover in any part of the proceedings a single syllable to this effect. On the contrary, notwithstanding all that passed upon the right, and the consent, and not renewing the demand, in 1778, upon this proposal being brought forward in 1779, all that we find upon the face of the consultation is this,—"Agreed to the Governor General's proposal." Who were the persons who agreed to the Governor General's proposal? Those who were present at this consultation—Mr. Barwell, Mr. Francis, Mr. Wheler, Mr. Hastings, without a dissenting voice, without an argument upon the subject. All doubts about right, all ideas about consent, completely vanished. The debate is comprised, which unusually happened in consultations of this sort, in about five or six lines, and ends in an unqualified agreement on the part of every member of the Board to renew the demand in 1779, in precisely the same terms, for precisely the same sums, as had been demanded in 1778!

Unanimous concurrence of the Board.

Unsuccessful application of Mr. Graham to Cheyt Sing.

A letter was written in consequence of this to Mr. Graham, instructing him as on the former occasion to renew the demand; and your Lordships will find that, just as upon the former occasion, the application to Cheyt Sing produced a promise, and the promise, as usual, produced a disappointment. The consequence of that was, that it became necessary for Mr. Graham to remonstrate with the Raja; and the

letter which he writes to the Board upon that occasion will be found in page 88 of the Evidence, in which he informs them that it is utterly impossible for him to obtain the payment of this sum from the Raja. This demand being thus made in the second year, without an objection on the part of any one member, Mr. Hastings lays Mr. Graham's letter before the Board and the one which accompanied it from Cheyt Sing. 11 JUNE 1792.

Deprecatory letter of Cheyt Sing.

The letter was comprised in these words—the part which is material to this question—

"It is absolutely out of my power to raise the sum required, and I am, therefore, hopeful that you will be kindly pleased to excuse me the five lacks now demanded, and that nothing may be demanded of me beyond the amount expressed in the pottah, which, through your favour, I obtained of the Honourable the English Company."

He then states that—

"As this Raje and zemindary and my dignity are the gifts of your Highness, I have judged it necessary to represent to you my inability and helpless state."

Resolution moved by Mr. Hastings to enforce payment.

Upon the receipt of this letter, what is it that Mr. Hastings does? Finding all the orders of Government trifled with by this man in this way, endeavoured to be eluded by the most egregious and the most puerile falsehoods, he comes forward and moves—

"That the Commander-in-Chief be desired to issue an order for the march of two battalions of sepoys from the nearest station of the army, excepting the first and temporary brigades, to Benares, on the requisition of Mr. Graham, and there to remain for the further orders of the Board; that the whole expense of this detachment, from the day of its march, be exacted from the Rajah of Benares; that this resolution be communicated to him by the Governor General, and that the Resident be ordered to inform the Rajah of it, repeating his demand for the sum required, and, in case of his refusal or non-compliance with his demand, to give immediate notice to the officer in command of the detachment, that he may march accordingly."

Assent of Sir Eyre Coote.

Sir Eyre Coote agrees to the motion proposed by Mr. Hastings, to order a military force to march, upon the requisition of the Resident, to Benares, and to remain at that place for further orders. Had Sir Eyre Coote any malice against Cheyt Sing? And yet I should be glad to know how, in respect to this minute, you can distinguish between Sir Eyre Coote and Mr. Hastings, and say that one did it upon the ground of malice and the other did not? The moment it was proposed, so proper did it appear to Sir Eyre Coote, a man of high honour and a great mind, and who

11 JUNE 1792. cannot be suspected of having any improper motive, that he thought proper to advise the making the demand and to persist in it. My Lords, here I beg distinctly to point out, because it is the first time the name of that great officer occurs, that it has the express and direct approbation of Sir Eyre Coote, who assents to it unequivocally the moment it is proposed.

Dissent of Mr. Wheler and Mr. Francis.

Mr. Wheler says—"I am against it." It is a little difficult to see upon what ground he had been for the motion, which appeared to Mr. Francis to be too harsh, upon the former occasion; but he now appears to agree a little better with Mr. Francis. Now comes forward Mr. Francis. He states—

"I never approved of the additional demand beyond his stipulated tribute. I cannot, therefore, concur in the measure proposed."

Now I wish to argue this case in the fairest possible manner, at least as far as I am capable of judging what is a fair way of arguing it, and not to push any one observation beyond the extent to which I think it ought really to be urged. Mr. Francis distinctly states—"I never approved of the additional demand,"—when, upon the renewal of the demand, in 1779, there is a direct and distinct agreement given to it by Mr. Francis, as well as the other members of the Board! What are we to infer from this but that, if he had stood in the situation, in 1779, in which if coming forward he could have opposed that demand and prevented its being carried into execution, he would have done it; and that you must suppose that, in the other case, he did not oppose it because he was conscious his opposition would be attended with no effect? You must, therefore, watch and see whether he at any time approves of the demand beyond his stipulated tribute. I am willing to admit that, in 1779, upon the march of troops being proposed by Mr. Hastings, we are unfortunately in this instance to lose the company of Mr. Francis; but, however, it is a loss that we submit to with some degree of consolation, because we shall not be long without recovering it; for, in the year 1780, I will show Mr. Francis acting, notwithstanding this, much more cordially than ever with Mr. Hastings in this demand.

The march of troops to enforce obedience.

Thus much, then, with respect to the demand itself. As to the measure of ordering the march of troops, that also is to be considered as criminal in two respects. Either it may

be stated that it was something more than the occasion required to be done; or it may be urged as in that respect furnishing a proof of malice. Upon this part of the case I shall not trouble your Lordships with much observation, because, it appears to me, one very short and plain answer will suffice. There can be no such thing as a right, but that very right implies the necessary means to enforce it. It will hardly, therefore, be argued that, if the British Government had a right to make the demand upon Cheyt Sing, that right did not imply the necessary means to be taken in case of his refusal to comply with the demand. He had refused to comply with the demand which the Board had made; the Board in making the demand having asserted the existence of the right. That was, therefore, an opposition to the right of the British Government, as declared by the representative of that Government, on the part of Cheyt Sing; and that opposition necessarily induced, as a consequence, the having recourse to those means which were necessary for enforcing it. It seems to me that this argument is unanswerably true. 11 June 1792.

Then the only question is—was more done than the occasion required? Was there any thing either insulting in the manner, or any thing harsh in the measure itself, beyond what was requisite? And, here again, I would only beg leave to point out that this was but a renewal of that conduct which Mr. Hastings had experienced the former year; and the first time it happened he had recourse to a measure more lenient than this. All that he proposed was, that it should be demanded within five days, and that then, if he did not pay, his refusal should be communicated to the Board and deemed equivalent to a resistance to the demand. But, in this year, when Mr. Hastings still found that, notwithstanding his lenient conduct in the former year, the same opposition again occurred, it would be trifling with the dignity of the Government, weakening all its energies and holding it out as contemptible in the eyes of all the native powers, if, after having set up this demand in time of war on the part of the British Government, he had not had recourse to such means as were necessary to enforce it. Because Cheyt Sing did not comply with the demand was he to abandon it; or to persist in it and have recourse to those means necessary to enforce it?

Previous leniency of Mr. Hastings.

Then I put it to your Lordships to say whether, in the case of a great subject, a tributary possessed of an armed

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force, called upon in a time of accumulating and increased danger to come forward with his force, when he contumaciously disobeys the demand, whether it was a measure too harsh to send orders to the Commander-in-Chief that forces might march to be near Benares, that they might halt there, and then notice to be given to him of the march of these troops, for the express purpose of preventing their going into the city of Benares. At the same time he was told that if, notwithstanding all this, he reduced the Board to the necessity of compelling the troops to march, then he must be at the expense of the detachment from the moment they did march. It so happened he did go on with his opposition to the demands of Government. The troops marched; a considerable expense thereby was incurred; and that did happen which the Charge states—the sum of 2,000*l.* was collected for the payment of the troops from Cheyt Sing in consequence of that march.

2,000*l.* collected from Cheyt Sing for payment of the troops.

Here again this Charge seems to me to be worded in a most extraordinary way. It is asserted that this sum was extorted from him under pretence of paying for these troops. What does the Charge mean? Let it speak distinctly and intelligibly. Does it mean to say that the money was taken by Mr. Hastings merely as a pretence of paying these troops, when, in fact, it was not applied to the payment of the troops? No such thing! The Charge is utterly false in that respect. It was applied to the payment of the troops. Nay, further, here again at least, as far as the propriety of the sum to be imposed upon this man, I have the concurrence of the Council; because the sum of 2,000*l.* could only be recovered by the approbation of the Board, and there does not appear to be any objection whatever to the recovery of the sum of 2,000*l.*, as the expenses incurred in consequence of that march. Therefore, it seems to me that both the original demand [was justifiable] and the measure taken to enforce it followed as the consequence of that demand; unless your Lordships should be of opinion—which is utterly impossible—that these means were more than the circumstances of the case necessarily required. And even then it would not advance in the slightest degree the argument on the part of the honourable Managers; because the question is not—whether your Lordships, exercising your judgment upon this subject, may not entertain one opinion, and whether Mr. Hastings, Sir Eyre Coote and Mr. Barwell, might not entertain another, but your Lord-

Concurrence of the Council.

ships must be satisfied that these persons, in every one of these instances, acted knowing that the measure which they adopted was not that which they ought to have had recourse to, and inferring from thence malice, as the principle which actuated their conduct. It appears, therefore, that nothing could be more clear than that, in the year 1779, the measures taken to enforce this demand are certainly clear from all objections whatever. 11 JUNE 1792

An account of the transaction forwarded to the Directors.

But here I will beg to state, and refer your Lordships to, a letter very material, which is to be found in page 90 of the printed Evidence. In this letter, after stating the whole of this transaction to the court of Directors immediately upon its happening, this account is given of it—

"We thought it necessary and consistent to demand a further contribution of five lacks of rupees from Rajah Cheit Sing for his part of the expences of the war for the current year, being the same sum as he paid towards that end for this last year. The Rajah strongly pleaded his inability to comply with this demand, and even suffered us to send two battalions of sepoys from Dinapore to Benares to enforce the payment, before he would grant it. At length, however, with much difficulty the amount was received from him, added to a penalty of 20,000 rupees for the expences of the two battalions of sepoys until their arrival at Benares. We shall make but this short observation upon the conduct of the Rajah, that, whether it proceeded from the apprehension of establishing a precedent for exceeding the sum of his annual and stipulated revenue, or from a sense of independency, it was equally unreasonable, and an ungrateful return for the benefits which he has been allowed to derive from the Company's protection.

WARREN HASTINGS,
PHILIP FRANCIS,
EDWARD WHELER."

"Fort William, 14th January, 1780."

This is the account given at that time by the Supreme Council writing to the court of Directors, censuring the conduct of this man in resisting the demand, from whatever cause it might have proceeded.

Renewal of the demand in 1780.

My Lords, I have now gone through the circumstances of the demand in the course of the two first years. I now come to that which happened in the year 1780, when your Lordships know this demand was again renewed. But it is further stated that it was renewed under these circumstances, which also differ from the former:—first, that payment was extorted under the threat of a fine of 10,000*l*. Next, that Mr. Hastings had at this time received a bribe from Sadanund, the treasurer to the Raja, given under a pretence of atoning for the opposition alleged by the said Warren Hast-

Alleged circumstances of aggravation.

11 JUNE 1792. ings to have been made against the payment of the said subsidy, but really in hopes of its inducing him, the said Warren Hastings, to give up that claim. Your Lordships will perceive that the last circumstance only, that which relates to the supposed bribe which he received from Sadanund, his wakil, is peculiar to the conduct of Mr. Hastings. Now this was the third time of this demand being made. It was made upon the 22nd of June; and the persons present at the consultation were Mr. Hastings, Mr. Francis and Mr. Wheler. Mr. Barwell had at that time left India for Europe. So that now, at least, if Mr. Francis had uniformly up to this period of time disapproved of the demand, and if he had merely agreed to it because his opposition would have been unavailing, the opportunity he was so long waiting for had arrived. He and Mr. Wheler constituted a majority in the Council; and, upon Mr. Hastings proposing this resolution a third time, Mr. Francis had only to oppose it then, and to see whether that opposition would not have had the assent of Mr. Wheler, and prevented the imposition of it in future. On the contrary, your Lordships will find, in the year 1780, when the third demand was made, all that appears upon the face of the minute is this—"Agreed to the Governor General's motion.—Philip Francis."

Departure of Mr. Barwell.

Mr. Francis commands a majority in the Council.

Now I admit that your Lordships find the same thing in the former year;—"Philip Francis" was also signed to the words "agreed to the Governor General's motion;" but in the former year, in fact, in a subsequent part of the consultation, Mr. Francis says—"though I have agreed, yet I never approved of requiring beyond the sum in the pottah." Immediately upon this motion being past, upon the 7th of September, 1780, a letter is received from Mr. Fowke, who was then the Resident at Benares; and it happens singularly in this case—I am sure I do not mean to draw any inference from it, for I should not know what inference precisely to draw—but it happens singularly enough, that the moment that the Resident who was appointed to Benares was a person who was connected with him who had been in the habit of opposing the measures of Mr. Hastings, from that instant all the opposition whatever on the part of the Raja himself ceased; and, though you find the former letters full of shuffling excuses and mean prevarications, ending in downright falsehood and absolute disobedience to the orders of Government in every instance, the account

Agrees to the motion of Mr. Hastings.

Submission of Cheyt Sing on Mr. Fowke being appointed Resident.

Mr. Fowke gives of the reception of the demands made in 1780—the Council then composed of Mr. Hastings, Mr. Francis and Mr. Wheler—is this:— 11 JUNE 1792.

"The Rajah has desired me to inform you of his entire submission to your demands. He has proposed to pay one lack of the amount within a few days. I shall immediately advise your honourable Board of the receipt of it, and shall remit it upon the most advantageous terms I can obtain."

So that here is manifested to the Board by the Resident, the entire submission to the command of the Board on the part of the Raja. He pays a sum amounting to one lac of rupees at that time, and promises within a few days to pay the remainder.

Prompt payment of one lac.

I think that, at this period of time—at least, supposing the consultation to end here—it must be pretty apparent to your Lordships, that there is no longer any foundation for the ingenious distinction set up by the right honourable gentleman, whose ingenuity will enable him to go as far as any man, namely, that Mr. Francis took this money under the consent of the Raja to give it; for after, in the year 1779, troops had actually marched and a fine had been imposed upon him of 20,000 rupees, as the expenses of the troops, it will hardly be said that, in 1780, this was a demand that was very agreeable to the Raja, or one that he was likely to consent to, if he did not feel that it was a measure which would be compelled if not complied with. And therefore Mr. Francis made this demand as an assertion of an absolute right on the part of the Government, and which he, as one of that Government, consented to impose.

The previous demand enforced by Mr. Francis, as an assertion of right.

But it does not stop here; for, notwithstanding this letter of Mr. Fowke, in which the Raja assented to the demand and proposed a speedy payment, delays took place. I mean not in any respect whatever to reflect upon the conduct of Mr. Francis, upon any one of those different occasions, which I believe to have been uniformly actuated by what he thought to be best for the public service. But the only way in which I am putting that is, to show the absolute inconsistency and repugnancy of their argument. I will prove, upon the same train of inferences, a degree of guilt equal or greater on the part of Mr. Francis—stating, at the same time, that I acquit him of any such motive, and that it is fortunate for him that the same inferences have not been drawn from his conduct as are drawn from the conduct of Mr. Hastings. Let us see what was the conduct of

Further delays on the part of Cheyt Sing.

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Inconsistency of Mr. Francis's conduct.

Mr. Francis upon this occasion, and how it would be if stated, instead of by myself, by the honourable Manager against him, as it is stated against Mr. Hastings. Would it not be said that, at least, it was no great proof of the sincerity of Mr. Francis, that, upon all former occasions, where he could not succeed in opposing the demand, he had opposed it; and the moment he can succeed by opposing it, then he assents to it—the moment he is in a majority of the Board, then his disapprobation ceases and he does assent to it? Certainly that would be urged—not by me, but by those who oppose me—if this had occurred in the conduct of Mr. Hastings which occurred in the conduct of Mr. Francis, that this was no proof of his sincerity: he opposes when he cannot succeed; he assents when he can! This is as to the circumstances of making the demand.

I then state that the Raja promised acquiescence, and paid a sum in part. Your Lordships will afterwards however find, in page 93 of the printed Evidence, intelligence arrives from Mr. Fowke, who was then the Resident, that, in spite of all his endeavours, having urged the Raja very strongly to complete the payment of his subsidy with all possible expedition, he says,—

"I find he is determined to make no further payment till he receives an answer to his arzee, transmitted in my letter, of the 5th instant, to the Honorable the Governor General."

Upon the receipt of this letter, the Board came to this resolution:—it does not appear upon whose motion it was, but it seems to be immaterial: I will take for granted, though it does not appear, it was upon the motion of Mr. Hastings, because it was his duty to propose precisely what was done:—

"Ordered—That Mr. Fowke do inform the Rajah that the Board are much displeased with those affected delays, they knowing his ability to make immediate payment of the subsidy, and that he peremptorily require him to discharge it."

It is then said—

"Ordered—That Mr. Fowke be desired to remit the same when received by shroffs, if possible, or by any safe mode of remittance, to Major Carnac, for the expences of the detachment under his command, and that Major Carnac be advised accordingly."

This happened, as it will be material to recollect, in order to apply it to a subsequent part of the Charge, upon the 21st of August, 1780, and is in page 93. So that here

is Mr. Francis concurring in the resolution of the Board with Mr. Hastings, when by his opposition to that resolution he might have carried it the other way: "that he do inform the Raja that the Board are much displeased with those affected delays, knowing his ability to make immediate payment"! Did Mr. Francis know the ability of the Raja to make immediate payment, in 1780, when he signed a consultation stating that to be a fact within his knowledge, or did he not? I have so high a respect for the character of Mr. Francis that whatever he states to be a fact I believe to be a fact—merely because he states it; and, upon the ground of his having stated that, in the year 1780, I take it to be a fact beyond all controversy, and they are calumniators who would state the reverse: it is a fact within the knowledge of Mr. Francis that they were affected delays in the Raja. Here, therefore, we have a motion of censure, not appearing from whom it originally proceeds, but agreed to on the part of Mr. Francis, asserting it as a fact consisting with the knowledge of every member of the Board, that these delays were affected; and that that is an affectation which ought to draw down upon the Raja the displeasure of Government.

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He concurs in a motion of censure on Cheyt Sing.

My Lords, I wish to meet this subject with fair argument in every part of it, not with declamation, if I could avoid it; and I will leave it to your Lordships to judge whether it is discussed as it ought to be, compared with the Charge and the Evidence. I say, then, that this motion of censure upon the conduct of Cheyt Sing, in 1780, was a motion in which the conduct of Mr. Francis cannot stand distinguished, in any possible respect, from the conduct of Mr. Hastings, but to which both gave their full and complete assent. Whatever, therefore, there was of criminality in it, if it results against the one it will equally attach against the other. Partiality may, but justice cannot, distinguish between the two. Let us, then, see under what circumstances this is afterwards communicated to the Raja. Mr. Fowke tells the Raja that the Board are much displeased with his affected delays, knowing his ability to pay the sum required. The consequence of that is, that he has occasion to write to the Board upon the 27th of September, 1780, and, in that letter, which your Lordships will find in page 94 of the Evidence, he states—

Shares the responsibility with Mr. Hastings.

"I have received the honor of your letter of the 7th instant, and have signified your command to the Rajah. He has promised to discharge the balance of his subsidy, being 253,000 rupees, in the course of a few days. I am treating with the shroffs for a remittance to

Cheyt Sing's promise of payment.

11 JUNE 1792. Major Carnac, and imagine I shall be able to effect it by bills from them for the whole amount."

This letter was upon upon the 27th of September, 1780, and in which your Lordships will perceive a promise to discharge the balance in a few days.

Upon the 5th of October, 1780, Mr. Fowke again writes,—

Further evasion.

"I think it incumbent upon me to inform you that the Rajah, notwithstanding his solemn assurances, has hitherto paid no part of the balance of his subsidy specified in my address of the 27th ultimo. He has resumed his plea of inability; and I can form no opinion how long he may think proper to protract the payment."

Proposal of Mr. Hastings to impose a fine.

And now, my Lords, may I take the liberty to beg the serious attention of your Lordships to what follows? On the receipt of this letter Mr. Hastings comes forward with this minute:—

"Such an instance of contempt shown by the Rajah of Benares to the authority of this Government, at a time in which his fidelity and gratitude for the many obligations which he owes to it ought to have prompted him to make a voluntary tender of that which he now refuses after repeated promises to grant, merits some mark, at least, of the resentment of the Board. For that reason, I must recommend that Mr. Fowke be directed to demand instant payment of the balance due of his subsidy; and, if he shall not have received it at the time of the receipt of this letter, to exact from him, in the name of the Board, the further sum of one lack of rupees, as a fine for his past disobedience. That, to enforce this order, Brigadier General Stibbert be directed to issue orders to the commanding officer of the battalions of the nearest stations to Benares to march immediately to that place, and to wait such orders as may be hereafter transmitted to them. In the meantime, the Board may be informed of the reception given by the Rajah to the present order; and it is hoped that it may be such as shall render it unnecessary to proceed to extremities against him."

Such is the language of the minute of Mr. Hastings upon the 19th of October, in the year 1780, which is in the 95th page of your Lordships' printed Evidence.

My Lords, surely this, at least, was a measure sufficient to alarm any man who doubted of the right to make the demand—who believed under that doubt that no consent was given to it; and here, at least, we should expect to find Mr. Francis pausing upon the occasion, and saying, as he did in 1778, when the demand was originally proposed—

"I had some doubt upon my mind. It cannot be wondered at that I should be extremely cautious in enforcing it with any harsh measure."

This was his language in 1778. But, as the result of better consideration of the subject, and being made acquainted

with all that happened—that the Raja was unwilling to pay, and, therefore, that it could not be recovered upon any other ground but the ground of strict right—when, in the year 1780, Mr. Hastings proposed to exact from him in the name of the Board one lac of rupees, as a fine for his past disobedience, what does Mr. Francis say? "I acquiesce"—acquiesce in what?—"I, Mr. Francis, acquiesce in the proposition of Mr. Hastings to exact from Cheyt Sing, in the year 1780, a fine of one lac of rupees, as a punishment for his past disobedience." 11 June 1792.

Acquiescence of Mr. Francis.

Good God! my Lords, it would be trifling with common sense to make any comments upon the language of these minutes; nor can I make them more clear than they speak for themselves. A fine for his past disobedience! What is that but asserting three things:—first, that it was his duty to obey the orders which he had received; secondly, that in point of fact he had not obeyed that order, though he might have obeyed it; thirdly, that upon the ground of that disobedience he is so criminal in the eye of Mr. Francis, one of the members of the Supreme Council in 1780, that he actually concurred with Mr. Hastings in a resolution imposing a fine of 12,000*l.* upon this man? Now, let the friends of Mr. Francis or the foes of Mr. Hastings come forward and argue, if they can, that there exists a distinction between the conduct of Mr. Francis and Mr. Hastings in this respect. Did Mr. Francis uniformly take this money from the Raja under the idea that he consented to give it, whereas Mr. Hastings extorted it from him, knowing him to be unwilling? Did Mr. Francis propose that a fine should be imposed upon him, because he had no doubt that the Raja would consent to that fine if he, Mr. Francis, proposed it? Therefore, I say, that here, whether Mr. Francis approved or disapproved of the former letter, whether there is a fair distinction existing between a doubt and an opinion, whether it can be said that though he agreed, yet he did not acquiesce, or whether it can be said that though he acquiesced, yet he did not approve—I will give him the benefit of every one of these distinctions. I take my ground upon what happened in the course of this consultation in 1780—from Mr. Francis's assent to the proposition of Mr. Hastings to impose a fine of 12,000*l.* upon the Raja, for disobedience to the authority of the British Government, that disobedience consisting in not complying with this demand, which for having made Mr. Hastings is now

Recapitulation.

11 JUNE 1792. impeached, while on the other side of the Hall it is, as I before stated, lamented that Mr. Francis who agreed with him is not one of the Managers to conduct that impeachment! Therefore I take the liberty of stating—and it seems to me extremely strong—that, in the year 1780, every one of these measures had the complete and unqualified assent of Mr. Francis.

What is it that Mr. Francis states he acquiesces in? The threat; but he hopes the threat will be sufficient. Why, Mr. Hastings had hoped so before. He was on this occasion, what he was not very apt to be, but the echo of the sentiments of Mr. Hastings. Mr. Hastings had concluded his minute by saying—

"It is hoped that it may be such as shall render it unnecessary to proceed to extremities against him."

Mr. Francis hashes up and repeats the sentiment of Mr. Hastings. So that, in this case, there is not a bit more aversion on the part of Mr. Francis than of Mr. Hastings to vote the infliction of fine, if necessary; and each of them equally hoped that it might be avoided if it were possible. In consequence of this, a letter was written to the Resident, to communicate this resolution of the Board to the Raja; and your Lordships will find that, upon the receipt of that letter, the money was immediately paid. So that, in effect, this measure was never carried into execution. Yet, such as it was, as I before stated, it was not peculiar to the conduct of Mr. Hastings, but it was the unanimous measure of the Board.

Payment of the balance by Cheyt Sing and remission of the fine.

Charge of taking a bribe from Sadanund.

With respect, then, to the other circumstance which is stated as peculiar to this Charge, that is, that Mr. Hastings had at this time received a bribe from Sadanund, the treasurer to the Raja, "given under the pretence of atoning for the opposition alleged by the said Warren Hastings to have been made against the payment of the subsidy, but really in hopes of its inducing him, the said Warren Hastings, to give up that claim,"—your Lordships perceive that, first, this is stated to be a bribe given from Sadanund to Mr. Hastings; next, the Charge ventures to point out upon what ground it was given, and it specifies this:—that it was under the pretence of atoning for the opposition alleged by the said Warren Hastings to have been made against the payment of the said subsidy; but really in hopes of its inducing him, the said Warren Hastings, to give up that claim.

My Lords, with respect to the mere fact of the receipt of this money, which, upon the part of Mr. Hastings, we have already fully and completely admitted, that is not in contest here; because your Lordships will perceive, that, in introducing the evidence upon this subject, the honourable Managers expressly stated that they did not mean, under this Charge, to go into the legality of the receipt of this sum of money, or the supposed corruption that might attend it, reserving that for the Charge under which it would more particularly fall — the Charge which belongs to presents. I shall, therefore, follow the example of the honourable Manager in that respect; reserving my defence with respect to the receipt of this sum of money till the time when the investigation of that Charge comes, when I will pledge myself to prove to your Lordships, from the evidence now upon your Lordships' table, that every part of it was immediately, fairly and fully, applied to the public service. So much with respect to the legality of this demand and the guilt that may attend it, or not, under its circumstances.

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Admission of receipt of the money.

Defence of the receipt postponed.

But it is said it was "given under pretence of atoning for the opposition alleged by the said Warren Hastings to have been made against the payment of the said subsidy, but really in hopes of its inducing him, the said Warren Hastings, to give up that claim." That I utterly deny; and I undertake to show that your Lordships must violate every rule of probability in the grossest degree, before it is possible to adopt the construction which the Charge puts upon the payment of that sum of money, namely, that it was given under a pretence of atoning for an opposition to a past demand, but in hope of inducing a remission of that demand in future. Now, is it stated that any such hope whatever was held out on the part of Mr. Hastings? And yet, unless it was so, it signifies nothing. It is admitted to be offered as an atonement for past opposition. And, if it merely means to state a hope existing in the mind of him who gave, not communicated to him who received, if no such assurance or anything leading to such assurance was held out on the part of Mr. Hastings, then, at least, there is no deception in his conduct. But I undertake to show your Lordships that, from the circumstances of the case, it is utterly impossible that this money could have been given to Mr. Hastings under an assurance, or a

Alleged object of the payment.

11 JUNE 1792. hope excited by Mr. Hastings that the demand would not be renewed in future.

Renewal of the demand after receipt of the alleged bribe.

And, my Lords, one fact, and one alone, seems to me decisive upon this subject. The fact is this,—this money is stated in the Charge to have been given up on the 21st of June, 1780. On the 21st of June, 1780, your Lordships are, therefore, to believe that the wakil of Cheyt Sing had received from Mr. Hastings assurances, under which he gave him two lacs of rupees, that Cheyt Sing should not in future be required to pay the annual sum of five lacs. Now I ask, whether it is possible for your Lordships to adopt that belief, when you find upon the very next day, while this wakil was at Calcutta, Mr. Hastings brings forward that demand—the demand in the year 1780—which receives the assent of every member of the Board? Is it not doing violence to human reason, to state it as a thing that will bear examination a moment, that he should assure him it was a circumstance which should not come forward in future, and repeat the demand the very next day at the Board?

Ready acquiescence of Cheyt Sing.

How extremely surprised must the Raja himself be if, after having sent down this wakil to negotiate with Mr. Hastings, and to buy off, according to them, the demand in future, he found the next day, after paying the money, the demand renewed! And yet your Lordships find that, instead of Cheyt Sing expressing any surprise or reluctance, when he must have felt both if he could have been duped in that manner, it is the only instance which there is upon the part of Cheyt Sing of an immediate, direct, unqualified, cheerful acquiescence in the demand made by the Board. Now I leave your Lordships to say, whether it is possible that you can believe that, in the only instance in which this man cheerfully assents to the demand made upon him, it was under a gross, palpable, imposition practised upon him —a sum of money taken from him under a belief the demand should not be renewed in future. It seems to me that the evidence arising out of the case, arising out of the thing itself, is stronger than all human testimony, and which proves the thing to be utterly impossible.

Recapitulation.

My Lords, I have now, therefore, gone through both the circumstances which are peculiar to the demand in the year 1780, and which characterise it as distinct from the other, besides that which is peculiar to the conduct of Mr. Hast-

ings. I apprehend, upon the whole, these facts appear to be perfectly clear:—that, in the year 1780, first, Mr. Francis gave his complete and full assent to the demand; secondly, he convicts the Raja of affected delay and disobedience; thirdly, he gives his entire acquiescence to exact from him a fine of 12,000*l.* as a punishment for his past obedience. 11 JUNE 1792.

Now is it not most extraordinary that, in that year in which the strongest of all the measures that were done were carried into execution against Cheyt Sing, this, the strongest of all the measures, had the approbation of Mr. Francis—the march of the troops—the fine of 12,000*l.* to be inflicted upon him—the convicting him of delay and disobedience? This happened in the year 1780, and this is the year in which Mr. Francis is satisfied of the propriety of making the demand, and assents to every one measure that is brought forward. Therefore, I say, that these acts of Mr. Hastings' conduct upon this occasion, which, if the others be criminal, are infinitely more so, are precisely those which, as distinguished from the others, received the warmest and most cordial approbation and support on the part of Mr. Francis, who was even then in the habit of acting in opposition to him upon all other subjects whatever!

Demand of cavalry in 1780.

I now come to what is stated to be a demand of a different sort, and which also happened in the year 1780. Your Lordships perceive that I allude to the demand which was then made for a certain number of cavalry, and which the Charge states thus:—

"That Mr. Hastings moved and carried a resolution at the Board, that the Rajah of Benares should be requested to furnish such cavalry as he could spare for the service of this Government, and to inform him what number he can supply; that a letter be written to Mr. Francis Fowke directing him to make the same requisition of the Rajah; and, at the same time, to obviate any jealousy which the Rajah might conceive that this may be converted to a permanent imposition, by assuring him that the Board will require the services of these forces no longer than while the present war lasts, after which they will be returned."

Previous reverses of the British.

Now, my Lords, into the circumstances of this demand I shall go very shortly, that I may not consume more than is absolutely necessary of your Lordships' time. This demand was made upon the 2nd of November, 1780. Your Lordships know that, previous to that period, the invasion of the Carnatic by Hyder Ali had happened, and the defeat of Colonel Baillie's detachment, of which intelligence had been received by the Government of Bengal. What was the

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General panic.

state of things at that moment? Horror every where!—as was admitted by the right honourable gentleman who was opposed to me—insomuch that, when we wanted to prove to your Lordships the precise distress which prevailed in every part of the Government at that period of time, the honourable Manager interrupted us by saying, that he would admit that the Government of Mr. Hastings was a scene of horror everywhere. I am willing to take the admission on the part of the honourable Manager; not to rely upon it merely as his admission, but to do what I am always proud of doing when I can, to borrow the language of him who can so much better express himself upon all subjects than I can, to borrow his language and to say—that, at Madras, Bengal and Bombay, when this demand was made, it was a scene of horrors and nothing else. Your Lordships know, war desolated every part of the Carnatic; famine depopulated the city. The first intelligence that came stated Madras to be without money, without men, and to be a lost settlement, without Mr. Hastings could send them supplies. What was the situation of Bengal in this moment, when Madras was draining it of its life's blood, as it were, in its most anxious and struggling moments? Hear what situation, as represented by Mr. Francis, Bengal was in:—the civil service in arrear; the army unpaid everywhere; a disposition to mutiny. And your Lordships will find that, in the course of this very minute brought forward by Mr. Hastings with respect to cavalry, Mr. Francis states, as one of the objections to the measure—

Perilous condition of Madras and Bengal.

Objection of Mr. Francis to the demand.

"We have no fund to meet our pressing expences, [nor do I see by what means it will be possible to create such a sum as our] situation requires."*

Invasion of Hyder Ali.

This was the state of things when the melancholy intelligence arrived from the coast of the invasion of Hyder Ali; intelligence which was of a nature to subdue every ordinary mind, but which had a contrary effect upon the spirit of Mr. Hastings, which only served to raise efforts worthy of himself and the most beneficial to that country possible to perform. Under that impression it was that Mr. Hastings came forward to the Board, speaking manly and high language such as the occasion required—"This is not a time for idle deliberations either at home or abroad." It had, unfortu-

* Minute of Mr. Francis, 26th September, 1780.—Printed in the "Minutes of the Evidence," p. 1522.

nately, been a Government of idle deliberation. It had everywhere superseded decision. Objections were constantly cast in his way. It was what is commonly met with in human affairs: there are men who, without having sense enough to point out what is right, have just sense enough to point out obstacles. Such had been too long the situation of Mr. Hastings' Government. It was time, therefore, that it should cease, unless the Company's possessions were to be undone—irrecoverably lost. Mr. Hastings begs upon this occasion there may be none of that idle deliberation—none of those specious but futile objections—but that the Board may co-operate cordially in the preservation of Madras; inasmuch as it could only be preserved by the union of all their sentiments and all their exertions. As part of the plan he brought forward upon that occasion, he proposes three things, which he describes himself to be of the most hazardous nature; being willing to hazard the Government under his command, though he himself was responsible for it, to give Madras a chance to save itself. And here I desire your Lordships to recollect that, when the first demand was made upon Cheyt Sing, he advises that the Government of Madras should be written to, to enter into an alliance with [the Raja of Berar]. He did not succeed; and it became his lot to rescue them from those dangers which he could not avert by his advice before they happened.

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General plan of defence proposed by Mr. Hastings.

He proposes, first, that a number of forces should be sent to Madras; then, that a sum of money should also be sent; and, lastly, that Colonel Goddard should be commissioned to Poonah, to negotiate, if possible, a peace with the Mahrattas. Upon this occasion he also proposed that Sir Eyre Coote should proceed to Madras, to take upon him the command of the forces.

Plan for the defence of Bengal furnished by Sir Eyre Coote.

I do not wish to dwell longer upon this part of the case than merely to make it distinct and intelligible. Under that resolution of the Board, as proposed by Mr. Hastings, Sir Eyre Coote did proceed to Madras. But, before he left Bengal, he was called upon, as commander-in-chief, to give in a plan of forces for the defence of Bengal in his absence, whose security was to become considerably endangered, in the proportion that those forces were drawn out from Bengal that were sent to Madras; and, as part of that plan for the defence of Bengal, it was Sir Eyre Coote who originally proposed, as your Lordships will find in the printed Evidence, page 1528, these two things:—first, that a thousand

11 JUNE 1792. of the Wazir's best horse should be procured; secondly, a thousand horse, if they can be procured, from the Raja of Benares. This was a proposition of Sir Eyre Coote, the commander-in-chief, laid before the Board for their approbation—not originally suggested by Mr. Hastings, it never having entered into his imagination till this moment; and yet this is a proposition which the Charge takes upon itself, gravely, in the presence of this high tribunal, to assert was a proposition moved and carried by Mr. Hastings at the Council; as if your Lordships must from that necessarily conclude that it was a proposition originating from him!

Includes a demand on Cheyt Sing for 1,000 horse.

The commander-in-chief is, by the unanimous resolution of the Board, called upon to deliver in a plan of public defence. He makes it part of that plan that Cheyt Sing shall be required to contribute a thousand horse. Mr. Hastings brings forward, in course merely, this proposition of the commander-in-chief to the Board; and it is inferred that Mr. Hastings acted from malice to Cheyt Sing, because he assented to the proposition of Sir Eyre Coote!

The demand proposed in course by Mr. Hastings.

I leave your Lordships to say, how far this sort of treatment is, in any respect, to be reconciled either to justice or humanity. At the same time, only let the fact be correctly and distinctly understood, that, whether this proposition is right or wrong, it did not originate with Mr. Hastings but with Sir Eyre Coote. I say, whether right or wrong, for I will not waste your Lordships' time in discussing it upon the general ground. Upon looking at the Charge itself, it will hardly go the length of stating that, when all was at stake in a great Government, a tributary should be suffered to remain in possession of 2,000 or 3,000 horse idle in his country, which were not necessary for his collections, and which could be only kept there for bad purposes; that he should be suffered, at such a moment, to be continued in possession of that force, and not be called upon to furnish it to the superior Government. I do not find the Charge put it as a thing to be doubted, because it puts it upon another ground—that for such cavalry as he did furnish he was intitled to be paid at a certain rate. I think it is pretty clear we are intitled, according to the Charge, to call for them, paying at that rate for them.

My Lords, here again suffer me to ask, what is there in this peculiar to the conduct of Mr. Hastings? Was he the only person present upon this occasion? "The 2d of November, 1780. Present the honourable Warren

Hastings, Philip Francis, Edward Wheler — Lieutenant-General Sir Eyre Coote absent on service."—So that, here again, in the year 1788, when a proposition was brought forward upon the requisition of Sir Eyre Coote for the cavalry to be demanded of Cheyt Sing, it had the assent of Mr. Francis, without an objection or any difficulty whatever thrown in the way of it, precisely in the same manner as he assented to the former demand.

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Acquiescence of the Board.

Neither, therefore, shall I feel it necessary, upon this part of the case, to enter into an examination of a doctrine which seems to have grown very much out of the cross-examination of the right honourable gentleman opposite to me. Your Lordships will recollect that it was asked of Mr. Markham whether, supposing Cheyt Sing could have supplied 2,000 cavalry in 1780, under this demand, the expense of cavalry, together with what he paid by way of tribute, the war subsidy and the two lacs, together with the establishment he kept up, would not have exhausted the whole of his resource in his country? He said it would not. But for the purpose of the argument it shall be taken that it would. I shall have to apply that fact to the conduct of this man, when, at the time he would not afford us the least assistance, he was at that very moment keeping up a force—for what purpose?—to assist us? No! but to take advantage of any revolution that might arise; keeping up a force in his country, according to the honourable Manager, so great as even to exhaust the income of which he was possessed.

Treacherous intention imputed to Cheyt Sing.

I will leave it to the honourable Managers to explain how it could happen that this man, in 1780, at the time he was telling us he had not a horse to furnish us with—that he was obliged almost to sell his clothes and elephants to raise a single rupee—maintained a force so great, at that period of time, that it affords a triumph to the honourable Manager—so great that it exceeded his income. If he meant to conduct himself in a proper manner to the British nation, why was not this his language—"I am in possession of a fertile country, a garden without an uncultivated spot: I owe it all to you. I have in my country raised such a force that I have exhausted my income in keeping it up. Here it is; command any part of it you please?" But here the defence of this man is to be that, at that moment, unknown to the British Resident or the Government there, he was keeping up a concealed force, at an expense even beyond the revenue he was in possession of.

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Thus much, then, with respect to the subject of the cavalry. But it is said that Mr. Hastings, under pretence of the above resolution, "did peremptorily and arbitrarily demand from the said Raja 2,000 cavalry, which demand was afterwards reduced to some other number; but without any offer of paying for the same, although the said Raja was not bound to keep up any cavalry." Now I admit, for the sake of argument, that he was not bound to keep up any cavalry. It seems a little extraordinary that, not being bound to keep up any, and not wanting them for the purposes of his collection, he should have kept up that number of cavalry which we afterwards found him in possession of. But the Charge states, we required him to furnish a certain number of cavalry, though he did not keep up any; that our requisition to him bound him to keep up a certain number of cavalry, he not being bound to keep up any. But our requisition was—he keeping up a number of cavalry, though he was not bound so to do, that he should furnish us with such as he could spare.

Cheyt Sing not bound to keep up any cavalry.

Misrepresentation of the terms of the resolution.

Then, what signifies stating in the Charge that he is not bound to keep up a certain number of cavalry? That does not apply to the case. All that was required of him was, that, if he did keep them up, such as he could spare for our service he should furnish us with, at any time when we wanted them.

It is then stated that, whatever number he furnished for the service of the East India Company, he was to be paid at the rate already stated. And here the Charge refers to the proposition which is included in the consultation of the 12th of June, 1775, in which Mr. Hastings proposes that Cheyt Sing, for the performance of his duty as a vassal of the Company, should keep up 2,000 horse upon a fixed establishment, to be disciplined by European officers, and that, whenever called for, they should be paid after a certain rate. But he proposes this as a matter of agreement to be made with Cheyt Sing; because, as I have before stated, it was not his duty at all times to keep up such an establishment. To this Cheyt Sing would not agree. The Board resolved only to recommend it to him, and, therefore, that agreement completely fell to the ground. But can there be anything more absurd and repugnant than this, that because, in the year 1775, the Board said to Cheyt Sing—"If you will at all times, in peace and war, so as to be ready in an instant's notice, for our service, keep up 2,000 horse, in

Proposal in 1775 to pay Cheyt Sing for the maintenance of 2,000 horse.

that case we will pay you for every man and horse you may furnish"—you shall apply that to a state of things entirely different; that is, that though not kept up in the manner you stated, he should be paid for them, though that was the condition you held out upon which you would do it? There is no application of that circumstance, because there is no application, in the resolution to which the Board came in 1775, to that state of circumstances under which the demand was made in the year 1780.

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Not applicable to the demand in 1780.

My Lords, I have now gone through an examination of all the circumstances which attended the making these different demands, upon three occasions—in the years 1778, 1779 and 1780. I have done it for the purpose of comparing throughout the conduct of Mr. Hastings with that of the other members of the Board, and in particular with the conduct of Mr. Francis, in order to see whether or not we can fairly say, upon any reasonable or probable inference, that Mr. Hastings was actuated by malice in his conduct, in having made these demands to which Mr. Francis also assented. The result of it is this:—that, in the year 1778, when the demand was first made, Mr. Francis agreed to it; that, in the year 1780, when the demand was made a third time, Mr. Francis agreed to it. Therefore, I will give the honourable Manager the benefit of this—that, in the intermediate year, that is, in the year 1779, Mr. Francis did not agree to it. But, if these are to be considered as so many distinct and separate crimes, in the manner they are stated in the Charge, the utmost benefit of that argument in favour of the Managers would be this—that Mr. Francis would stand convicted in two instances only, and Mr. Hastings in three. That would be the only difference, supposing these to be considered as so many separate and distinct crimes, in the way stated in the Charge.

Recapitulation.

If applied in the other way, as facts from which malice is to be deduced, I should be glad to know whether there can be any difference in the inference, when you find Mr. Francis, though doubting as to the right, assenting to the strongest measure of all, that is, enforcing a fine upon the Raja for disobedience—whether this does not afford that inference, in a case where all stands upon inference? Let any person who knew neither of these gentlemen take this Charge and compare it with the evidence and say, if malice is to be inferred, whether it does not apply as strongly to one as to

11 JUNE 1792. the other. But I accuse neither. I acquit Mr. Francis as much as Mr. Hastings. Why have I chosen to draw a contrast so forcibly between these two gentlemen? Not from anything personal to Mr. Francis individually; I owe him nothing but civility; nor do I throw any personal imputation upon him. But it is my happiness to address myself to a tribunal of men of the highest honour, upon this occasion, who will feel it to be a fair ground of contrast for the conduct of these two persons, that Mr. Francis and Mr. Hastings were in constant political opposition to each other, and in the habit of differing upon every other public occasion whatever: then, if I find these two gentlemen, who never agreed upon any other subject, agreeing upon this, surely that furnishes the strongest presumption of the conviction upon the mind of each that the act was one fit to be done.

If I were to put Mr. Barwell more prominent than Mr. Francis, it would be liable to this observation—that Mr. Barwell had been in the habit of politically acting with Mr. Hastings—that Mr. Barwell assented to the measure barely because Mr. Hastings proposed it. But, when we find Mr. Hastings and Mr. Francis agreeing, it will hardly be said to be the result of a conspiracy originating in malice with a view to ruin Cheyt Sing. Therefore, the argument of these two gentlemen upon this occasion cannot be explained or obviated by their agreement upon all other points. It is an agreement between two disagreeing opponents, and, therefore, the strongest proof that the measure itself was right.

My Lords, I have now gone through the subject of these different consultations, as far as they respect the conduct of Mr. Hastings, in the several instances of these various demands. I am now coming to a subject altogether different: I mean the conduct of Cheyt Sing himself.

My Lords, the honourable Manager who opened this Charge stated that it was, in every one of these instances, the delay of but a few days in every one of those sums that were required of him. I apprehend the case does not turn upon any such ground. Will the honourable Manager now distinctly state that all that Cheyt Sing meant was this—to put off the payment of this sum from one day to another? He cannot do that, because, if he did, he would assert that which is directly contrary to the Charge itself and all the evidence given by him in the support of the Charge. The Charge states—what?—that these sums were in every

instance extorted from Cheyt Sing, he attempting by all the arts of delay to evade the payment, and, when that was not successful, compelling us in every instance to recover them by means of a military force, actually marched for the purpose. His conduct was, therefore, not merely a delay in payment, but an attempt to evade the duty incumbent upon him as a subject of the British Government, in the hour of our distress and danger. I say that it was an attempt, not merely to delay the payment, but to discharge himself of a duty, and that in every instance it was a breach of his duty—supposing he was liable to furnish those troops when required. 11 June 1792.

Evasive conduct of Cheyt Sing.

Was it or not, then, a part of the duty of Cheyt Sing, upon the requisition of the superior Government, to furnish, in each of those years, under all the existing circumstances of public distress, which if it had ended in the ruin of the Company's possessions must have involved the ruin of his own—except they had been saved by an act of treachery on his part, that is, entering into an alliance with those enemies who were to destroy our possessions—was it or not a part of his duty, resulting from the relation in which he stood to the British Government, to furnish the force apportioned to his possessions for our defence? And here, I beg to observe that there is not in the Charge, in the speeches of the Managers, in the evidence, nor in any one consultation, the slightest insinuation to be found that, supposing Cheyt Sing was liable to be called upon for the contribution of any sum whatever, the sum he was called upon to contribute was not the sum that he ought to have paid. That is not in contest between us, for the Charge alleges no such thing. I am, therefore, warranted to assume that, provided he was liable to the payment of any sum, he was only called upon to pay that sum to which, under all the circumstances of his situation, he was liable.

Liability of Cheyt Sing to furnish the forces demanded.

Was he then liable to the payment of these sums? It seems here only necessary to refer your Lordships to the general duties which existed in the relation between him and the English Company. I have shown him a subject dependent upon the English Government; and I rest upon this as a fundamental proposition, that there can be no such relation of subject to sovereign but this duty results from it. If I were to put the case, as I believe I might, even of the Germanic empire—I am sure I speak with great doubt and ignorance upon that subject—but I apprehend, even in that case, it is a fundamental principle that every prince who

Case of the Germanic empire.

11 JUNE 1792. holds under that empire shall contribute, in proportion to his possessions, a certain number of troops for the public defence. I admit in that case the number is settled, but the principle is the same, that is, that no man shall hold part of the public possessions and not be bound, according to the extent of these possessions, to contribute to the public defence.

Beyond all this, I state that he was bound to do it under the oath which he took upon the transfer of the sovereignty to us—the oath of allegiance—the oath of fealty. How does the honourable Manager construe that? He says the duty that was included was negative only—that it was, that he was not to enter into any alliance with a foreign prince. But why does the honourable Manager state it in that way? The words of the oath are these—"that, upon entering into an alliance with any foreign prince, and acting in any manner contrary to the fidelity you have thus sworn to maintain"—what then?—"your zamindary, with all the rights and privileges belonging to it, shall become absolutely forfeited."

The honourable Manager, for the sake of exculpating Cheyt Sing, divides the oath in two. He takes the former part, which I admit includes a duty merely negative. By splitting the proposition in two, taking what serves his purpose and casting away what makes against it, he establishes this proposition—that the duty of Cheyt Sing was negative and nothing more. I say it is affirmative, and that under these words—"that he would be faithful to the Company and bear true allegiance"; "that he would comply with "all their demands as far as consistent with justice": and if he did not, what?—why, his "zamindary, with all the "rights and privileges belonging to it, shall be absolutely forfeited." The express condition is, your zamindary shall be forfeited "upon your acting in any manner contrary to the fidelity you have sworn to maintain!"

Then, was it or not part of the fidelity of Cheyt Sing, as a subject dependent upon the British Government, having taken an oath of fealty and allegiance for the dominions he held, to contribute to the support of that Government of which his possessions formed a part? If you decide that it was part of his duty, then the question arises, whether he has been guilty of any breach of that duty. Can there be any doubt about that? You have only to recur to the proceedings of the Board thus assented to by Mr. Francis

Breach of duty on the part of Cheyt Sing.

in 1780, in which you find that, upon the express foundation of a breach of that duty, a fine of 12,000*l.* is ordered by the Board to be inflicted upon him. Therefore, I say, it was not merely, as the Manager states, an attempt upon the part of this man to delay the payment he owed: there is here an actual breach of his public duty, a violation of that fidelity upon which he held; and the condition was, that, whenever it was violated, his zamindary should revert to the superior lord. 11 June 1792.

My Lords, the way in which I desire to state this subject is, that Cheyt Sing, by his conduct in each of these succeeding years, in resisting the demands of Government and in compelling them at last to have recourse to force in order to carry these demands into effect, had been guilty of a breach of that condition upon which he held his zamindary; and that, in consequence of that, supposing the British Government to be disposed to enforce the penalty to the utmost, the zamindary ceased to be his, and anything short of that was lenity and mercy to this man; because that conduct would have warranted them in enforcing the forfeiture of his zamindary, which upon every principle of justice had been the result of that breach of duty. This being the case, the question then recurs—in what manner ought Mr. Hastings to have acted? I have hitherto only stated to your Lordships the conduct of Cheyt Sing, with respect to his refusal to comply with the several demands for money in the three succeeding years. Your Lordships know that, beyond this, the demand was made upon him for a number of cavalry—which Mr. Markham proved to your Lordships the demand to consist in—at a subsequent period of time. The question then arises—how had he conducted himself with respect to this demand?

Consequent lapse of his zamindary.

First, had he any number of cavalry in his possession, which at that time he could have furnished? And here, without going through the particulars of it, it will be only necessary to refer your Lordships to the evidence of Mr. Markham, who has clearly and distinctly proved the fact, that, when he went up to Benares in 1781, with the instructions from Mr. Hastings to demand from this man 2,000 or 1,500 cavalry, he communicated them to Cheyt Sing, and that he had at that time near 3,000 cavalry, as it afterwards turned out, in his service. Mr. Markham has further proved that, of that number, a hundred would have been actually sufficient for the purpose of his collections, because

Ability of Cheyt Sing to furnish cavalry.

11 JUNE 1792. afterwards a hundred was sufficient for that purpose, when the country was transferred to his successor. Did he furnish this number of troops? Mr. Markham from day to day applied to him, in order to induce him, if possible, by entreaty, by every means in his power, to do what the Board required.

The evidence of Mr. Markham.

Mr. Markham has distinctly told your Lordships that he never could get him to muster a single horse. But, what is infinitely stronger, your Lordships will find that, in 1781, shortly before Mr. Hastings went up to Benares, a letter had arrived from Mr. Markham to Mr. Hastings;—your Lordships will find it in page 1714 of the printed Evidence; it is dated March 27th, 1781. After a number of ineffectual attempts to procure from him any number of horse whatever, Mr. Markham writes:—

"The Rajah has had intelligence from Calcutta that the Mahrattas had entered our provinces; [and he now talks among his favourites, as I have good intelligence, of delaying the supply of cavalry, until he can be certain whom fortune will favour in the war. However ridiculous this notion is, he has adopted it; and, if any serious accidents happen to our arms, he has told his minions] he will declare independence."

Treacherous motive imputed to Cheyt Sing by Mr. Markham.

So that your Lordships find that, upon the 27th of March, 1781, there was intelligence conveyed by the British Resident to Mr. Hastings, long before he went up to Benares, not only that this man would not furnish one horse of the number that he was required to produce, but that his reason for refusing to furnish them was, that he had heard there had been an actual invasion of our province by the Mahrattas, and he wished to take advantage of that invasion in order to turn this cavalry against us, which we called upon him to furnish for our support. This is his conduct, as represented by the British Resident, Mr. Markham, to Mr. Hastings—I care not whether true or false: so that he did everything in his power, upon every demand made upon him, to avoid complying with it. What were his inducements for that? It seems only necessary to have recourse to his correspondence to explain that. If your Lordships look at the correspondence of all the successive Residents, from 1777 down to 1781, when Mr. Hastings went up to Benares—in the time of Mr. Graham, in the time of Mr. Fowke and in the time of Mr. Markham—it is always precisely the same thing. He is increasing his forces: he is adding to the number of his troops. This Mr. Graham states in 1779. Mr. Fowke states the same thing:—

Warlike preparations of Cheyt Sing.

"He is assembling his troops industriously and conceals their number from me." 11 June 1792.

And, lastly, in 1781, Mr. Markham states that which I have just had the honour of reading—

"That he is withholding the assistance of his cavalry from the British power, for the express purpose of joining the Mahrattas, in case of an invasion, and turning them against us."

This had been the conduct of this man, as uniformly represented to Mr. Hastings, during the course of these three years.

Review of the conduct of Cheyt Sing.

If we consider his conduct in this respect, as to the obligations that had been conferred upon him by the Company, what was it? We had raised him to the situation he enjoyed. He owed the zamindary entirely to us. The extension of all his rights was the intention of the British Government in Bengal. The Charge admits that Mr. Hastings had raised him to a degree of power and dignity unknown to his ancestors. The state of the Company was at that time the most distressing, and all the return we had from him was, carrying on dark and secret intrigues with the enemies of the English nation in order to join them, to overturn their authority, and, as Mr. Hastings has truly stated, to erect his own independence upon their ruins. Not, as has been falsely stated to your Lordships, that he ever supposed that this man would by his own individual and separate strength have it in his power to match the British force—to beat it down, and raise himself into independence. No; but that, in the state of things—a French armament, an invasion of the Carnatic, a Mahratta invasion—under one or other of these events, a favourable opportunity might come, when he would have it in his power to make this ungrateful return to us for all the benefits we had conferred upon him—to join our enemies and, if possible, to accomplish our ruin. This had been the conduct of that man. Pursue it through all its stages, as described by the different Residents in these several years: nay, in the beginning of this very year, your Lordships have been informed that it was a matter of observation with every officer stationed in the province of Benares that, day after day, there were fresh supplies of troops coming into the zamindary of Cheyt Sing, at the very moment when he was pleading the greatest poverty, and when he was unwilling to furnish a single man for our assistance.

11 JUNE 1792. "But"—says the honourable gentleman—"these troops might be going elsewhere. They might be going to Nujif Khan. They might be going to Oude." "Undoubtedly they might," says Mr. Gray, "if they chose to take two faces of a triangle instead of one." "Oh! I have nothing to do with triangles"— says the gentleman—"might they not have gone to Lucknow?" "Undoubtedly they might. Undoubtedly they might go to England, or to any part of the globe. But, when parties of armed men were coming into the zamindary of Benares day after day, and not a man was seen to go out of it, are you to suppose that they chose to travel the two sides of a triangle instead of one, and go through Benares to Lucknow and to [Fyzabad]? I trust your Lordships will think I was well warranted in asserting that there can be no doubt but that all those troops were then clandestinely raising by Cheyt Sing for that circumstance which took place, I admit, sooner—much sooner—than he expected, when he put himself in the field at the head of an army of 40,000 troops. Such had been the conduct of Cheyt Sing under all these circumstances; a conduct which, as I have no doubt your Lordships will be fully satisfied, upon all the evidence you have heard, originated in no other motive than a fixed aversion to the English Government, and a fixed determination to cast off the yoke of it whenever an opportunity should occur.

It was in contemplation of this conduct, towards the year 1780, Mr. Hastings having formed a resolution to go up to Benares, that he had some conversation with Mr. Wheler upon the subject, in which he stated what his conduct was with respect to this man. This leads to the consideration of the journey up to Benares; and, if it is not too early to adjourn, I shall in a subsequent day conclude what I have further to offer to your Lordships.

CONCLUSION OF THE SPEECH OF ROBERT DALLAS, ESQ., COUNSEL FOR MR. HASTINGS, IN SUMMING UP THE EVIDENCE IN DEFENCE ON THE FIRST ARTICLE OF THE CHARGE, RELATING TO BENARES; 12 JUNE, 1792.

MY LORDS,—When your Lordships last adjourned, I had endeavoured, to the best of my power, to go through the several consultations that had taken place in the years 1778, 1779 and 1780, and to examine the conduct of each of the different members of the Board with reference to the various demands; and I had done it for the purpose which I had occasion so fully to explain to your Lordships—to obviate that which I conceive to be the most material allegation that occurs in the course of this Charge—I mean, that Mr. Hastings was actuated by malice, and, under consciousness that his conduct was a breach of treaty, made the several demands that he did upon the Raja Cheyt Sing. I should have stated to your Lordships that, previous to the time of the conversation which took place between Mr. Hastings and Mr. Wheler, preparatory to the former going up to Benares, intelligence had been transmitted to the court of Directors regularly, in every year, of the making of each of those demands; and it is now in evidence before your Lordships that, not only the intelligence was received by the court of Directors, but that actually the accounts transmitted to them were, in every instance — as your Lordships know the regulating Act requires—at the same time transmitted to His Majesty's Ministers. 12 JUNE 1792

Intelligence of the demands on Cheyt Sing sent to the Directors and to the Ministers.

My Lords, I may, therefore, venture to say that the fullest possible information was given to all those whom the law had appointed to require it, upon occasions of the sort; inasmuch as it was, not merely a communication of a demand which had passed of course, but a demand which in every instance had given rise to various debates in the Board, which, at the early part of the transaction, had occasioned differences of opinions, and which led the Board to come to a decision upon the question of right.

12 JUNE 1792.

On the first day I had the honour of addressing your Lordships, I took the liberty of stating that, under these circumstances, I conceived it would have been competent for us, if we had found any such disposition, to set up, on the part of Mr. Hastings, a complete legal estoppel to this Charge. Upon a communication of the first demand being made to the court of Directors, and the requisition that they would decide upon the question of right, what was the answer received by the Supreme Council from the court of Directors? No disapprobation whatever of the demand; but, on the contrary, a general approbation of all the measures taken upon the intelligence of a war, and of which number this was undoubtedly the most material.

Approbation of the Directors.

Your Lordships, I am sure, will not understand me as meaning to contend that it is in the power of any one man, or of any body of men, to give authority to another to commit an offence against the law. Most undoubtedly not! But, in cases where obedience to the orders of a body of men is incumbent upon public agents conducting the affairs of Government abroad, there, on the other hand, I think I may safely say that, if, under all the circumstances of the case, an order appears to have been given by them to do the particular thing which is complained of as criminal, that order constitutes a legal justification.

My Lords, it will scarcely be contended that, if the court of Directors, having these several treaties and agreements before them, and taking them fully into their consideration, had in the first instance, upon the breaking out of the war, issued orders to the Government of Bengal to make the demands in question upon the Raja Cheyt Sing—I say, I think it scarcely will be contended that, under these circumstances, the Governor General and Council would not have been bound, in conformity with that order of the court of Directors, to have made these demands. I take upon me to state distinctly that they would, even if the case had been of a much more questionable nature; because, under these circumstances, the court of Directors, who are by law authorised to issue orders to the Governor General and Council at Bengal, would have taken upon them to decide upon the legality of the right and the question of the demand. The duty of the Governor General and Council would have been merely ministerial upon that occasion, and they most undoubtedly must have carried that order into execution.

Then, under all the circumstances of the case, have not the court of Directors done that which is fully equivalent to the fact of a direct order being issued by them, in the first instance, to Mr. Hastings and the other members of the Board, to make the demands which are the subject of the present Charge? I apprehend that, in principle, it makes no difference whatever whether, in point of fact, there is an express authority to do a particular thing, or whether, when the thing is done, there is a communication of it to those who have a power to prohibit it in future, desiring them to interpose if they mean it should not be repeated; because, I say, that, in the latter case, their assent undoubtedly is to be presumed and, being presumed, is equivalent to a direct order, if they had a full and impartial communication of all the circumstances of the case. 12 JUNE 1792.

I am perfectly aware that this doctrine would not apply to the case, if there could be suspected to have been any collusion whatever between Mr. Hastings and the court of Directors with respect to these demands; because, then, acting under the command of the court of Directors would cease to be a justification—a justification only meaning acting with good faith and in conformity with what the law requires; whereas collusion would undoubtedly, put an end to that. But there is not a pretence of any collusion under the circumstances of this case. Mr. Hastings stated fully, fairly and distinctly, all the grounds upon which he thought he was bound to make these demands, and the court of Directors gave a general approbation to his conduct, that is, to all his measures in preparation for war, of which measures this is one. There is no difference between giving a general approbation to all the measures, upon the occasion of war, and giving a specific approbation to a particular measure. The approbation of all involves the approbation of each. Therefore I am warranted to state that the court of Directors, upon communication being made to them of this demand having been made, in approving the conduct of Mr. Hastings, not only ratified what was past, but gave him a direct authority to repeat the demand in future. Under these circumstances, therefore, it would certainly be competent for us to contend that, whatever opinion would otherwise be formed upon the propriety of these demands, there is an end to the inquiry; the conduct of the court of Directors, on this occasion, amounting to an authority to make the demands in each of the subsequent years. Justification of Mr. Hastings.

Having merely explained the case, as it stands, with respect

12 June 1792. to that circumstance, I desire it to be distinctly understood, upon the part of Mr. Hastings, that I in no respect wish to avail myself of the approbation of the court of Directors, given to these demands in each of these particular instances, further than to show that, in every instance, there is a full, free, fair and candid, communication of the different measures proposed by Mr. Hastings and adopted by the Council to the court of Directors, whose agent he was and whose orders he was bound to obey. Not only, therefore, the court of Directors, but the Secretary of State for the time being, and the Commissioners of the Treasury, having full notice of the demands being made in each of these years and of their application to the public service, stood by and saw it done from time to time; and, therefore, I leave it to your Lordships to say whether, in point of justice, or even in point of law, it can be competent now to come forward and convert into crimes those very efforts by which, with their privity and consent, their possessions were at the moment saved. I am aware, however, it may be said that there is no express, direct, approbation given by the court of Directors; which, however, I contend is not necessary, if that which is to be collected from their conduct is equivalent to an express approbation. Still, however, it will be said—this is but the conduct of the court of Directors, and they are a body of men who are very much in the habit of conniving at all the irregularities of their servants, provided they are attended with advantage to themselves; you cannot, therefore, lay any stress upon what the court of Directors did upon this occasion. Let us therefore see what was done by His Majesty's Ministers;—and here again, perhaps, it may be said that, under the Act of Parliament, their duty was merely of a superintending nature. Why a superintendence is given by any Acts of Parliament, except to interpose and prevent acts of public oppression when they are known, it would be a little difficult to comprehend. Still, however, no more upon the part of the Ministers of His Majesty at that time than of the court of Directors, was there any interposition to prevent these demands, but a direct and full approbation was given to them. Thus then, whether we examine the subject as it relates to the opinion of the different members at the time in India, or whether we refer it to the court of Directors and the Ministers for the time being, I apprehend that, in every instance, there is a direct, or equivalent to a direct, approbation of every demand, and an exclusion of the inference of

Approbation of the measures on the part of the Ministers of the Crown.

12 JUNE 1792

malice, as far as it can apply to the gentleman at your Lordships' bar.

Lapse of time before the preferment of the Charge.

But, with respect to this inference of malice, let us pursue the subject a little further. After years had elapsed from the time of making the first demand, it did occur to certain persons in this country to frame a charge something like the present, and the subject at length got amongst the most vigilant body of men, I hope, in this kingdom, possessing among them men of the first ability in point of acuteness and of the first worth in point of integrity: it got into the House of Commons, and the conduct of Mr. Hastings became the subject of investigation there. I am not about to do anything so grossly irregular as to venture to state to your Lordships what I may suppose to have passed in that House; it will be sufficient for me only to remind your Lordships what we have heard pass in this.

Eloquence exerted against Mr. Hastings.

Among many of the great disadvantages which have attended the situation of Mr. Hastings, accused by the Commons of England, not one of the least has been that of having this very accusation conducted by a person, undoubtedly, in the opinion and estimation of all who know him, one of the most powerful debaters that this country at present possesses or perhaps ever produced; and not only the most powerful debater, but, I should say, the most eloquent person in it, according to my idea of genuine eloquence; whose charm is simplicity, whose character is force. This was, unfortunately, the person who came forward upon this occasion, originally, in the House of Commons, to examine the conduct of Mr. Hastings in having made these several demands.

Your Lordships heard distinctly the argument which that honourable Manager, upon the part of the Commons of Great Britain, submitted to this Court. You cannot have forgotten—it was much too able to leave but a transient impression upon your minds—how much he laboured the point, and went through all the agreements, in order to show that we had no title whatever to make this claim; and, after having employed upwards of two hours of your Lordships' time, he ended with this declaration—that he, perhaps, ought to apologise for having made the question of right in particular the subject of so much investigation, but that his reason for it was, that he had the misfortune to differ with a person of the first ability and of the highest integrity in this country upon

Difference of opinion as to question of right.

12 JUNE 1792. that very point.* Who that person is—"of the first ability and of the highest integrity"—I cannot presume to state. If I conjectured, it would be irregular to say; but it is enough for me that, upon the concession of the honourable Manager, it is a person of the first ability and of the first integrity. Then, my Lords, consider what happened upon that occasion and apply it to the conduct of Mr. Hastings. That person, of the first ability and of the first integrity, had an advantage which certainly Mr. Hastings did not possess; for, with all the respect I feel for the talents of Mr. Francis, it would be flattery too gross and adulation too servile to say that, in point of disquisition or debate, he is at all equal to the right honourable Manager to whom I allude as having opened this Charge. The other right honourable gentleman, therefore, in hearing the case discussed by the right honourable Manager, certainly had the chance of a much stronger light being thrown upon every part of it than Mr. Hastings had, upon hearing the discussion on the part of Mr. Francis.

An argument against the imputation of malice.

My Lords, after that right honourable person of the first ability and the first integrity, applying all his abilities to the subject under the guidance of this integrity, had heard, I presume, in the House of Commons the right honourable Manager debating this subject for hours together, the result was that he formed precisely and exactly that opinion in respect of which your Lordships are now desired to fix the imputation of malice upon the gentleman at your bar. Then, if it is possible to state a case which, of all others, precisely excludes the idea of malice, it is this—when two of the most able and honourable persons come together to discuss this subject, and, after their mutual discussion, each ends with entertaining an opposite opinion. I will leave it to your Lordships to say whether that is a case in which it is possible that any human tribunal whatever, meaning to conduct itself uprightly in the administration of justice, can fix upon the party accused the imputation of malice.

It seems to me that there are endless dangers to which this doctrine of inference would lead; for, if the honourable person to whom the right honourable Manager alluded was of opinion that, under all the circumstances of this case, the right did exist on the part of the British Government and

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* See the speech of Mr. Fox in Opening the First Article of the Charge; vol. i., p. 224.

that it was the duty of Mr. Hastings to enforce it, nothing 12 June 1792.
can be more clear than this—that, if that right honourable person had been in the situation of Mr. Hastings, he admits he would have acted precisely as Mr. Hastings has done. Why, then—that that right honourable gentleman is not himself the object of impeachment, upon this occasion, and the man to whom malice is to be imputed, is owing to the accidental circumstance of his not being in the situation in which Mr. Hastings was placed at that time!

But the consequence of this dangerous doctrine does not stop even here; for, supposing, after all the discussion that the subject will have undergone in this Court—I put it as a possible case: I do think it impossible, with respect to your Lordships, but I put it as a possible case—that your Lordships should ultimately differ upon the question of right, what would any of your Lordships do who think Mr. Hastings had a right to make this demand? What would you feel, in respect of that opinion, if the imputation of malice were to be cast upon yourselves? And yet here again it comes round to precisely the same thing; for if, instead of being in the situation of sitting in judgment upon Mr. Hastings, you had been in the situation of the noble Lord now in the supreme Government of Bengal, you would under the same circumstances have enforced this demand upon the part of the British Government. I shall, therefore, not trouble your Lordships with pursuing this subject of right any further. I trust that I have most fully and satisfactorily established—I have endeavoured, at least, to do it with fair observations—that, beyond all question, both upon general principles and upon the true construction of the agreements, the British Government had, by their representative, a right to make these demands. I have endeavoured further to show that the occasion was such that it became, undoubtedly, the duty of those who were entrusted with the administration of our affairs to exercise the right.

I now, therefore, come to the point at which I left off when your Lordships last adjourned; and I was then stating it to the Court that, towards the latter end of the year 1780, there happened a conversation between Mr. Hastings and Mr. Wheler, in the course of which a communication took place from the latter to the former gentleman, the nature of which I shall have occasion, presently, fully to examine. But, before I come to that part of the case, your Lordships

12 JUNE 1792. may, perhaps, observe that there are some other points of the Charge upon which I have not yet troubled the Court. These points are shortly these:—

Enumeration of charges against Mr. Hastings.

First, the charge that Mr. Hastings entered into a clandestine negotiation with the Wazir, for the purpose of selling to him the zamindary of Benares. The second, that he wrote a letter to the Raja charging him with delay in the payment of his monthly kists, though he knew the fact to be otherwise. The third, that he charged him with being the cause of the non-payment of the stipend to Saadat Ali, knowing that fact also to be untrue. The fourth, the subject of the delegation of these powers, with respect to their legality and expedience, under which Mr. Hastings afterwards went up to Oude, and conducted the business of the Government there.

I took the liberty, in the outset of what I offered to the Court, to state that one great benefit of the very powerful discussion which has attended every part of this case by my friend who sits near me was this—that it enabled us to distinguish what were the great grounds upon which this [cause] must depend, and that, with respect to such parts of it as appeared to me not so material as to require a second discussion, I should take the liberty to leave them to the examination they had already received. I feel extremely for the necessity I am under to trouble your Lordships so long as I must unavoidably do, but I fear that that length would be considerably increased, if I was to go into an examination of all those collateral circumstances which branch out of the substantive facts in the case. I shall, therefore, take the liberty, with respect to these four points in the case—merely that I may bring what I have to offer to your Lordships to a close within the compass of this day's attendance—to call to my aid the examination, much more able than any I could give, which they have already received, and the evidence which has been already applied to them. Then I shall come to what happened towards the latter end of the year 1780, when Mr. Hastings had formed the resolution, the reasons of which now pretty plainly appear to your Lordships, to go up to Oude.

Conversation on the subject of Cheyt Sing's offences between Mr. Hastings and

Towards the close of that year, we find that a conversation took place between Mr. Hastings and Mr. Wheler; and, in the course of that conversation, which your Lordships will find recorded in the printed Narrative, Mr. Hastings had

occasion to express his opinion of the conduct of Cheyt Sing, which I will read to your Lordships. I should observe that what I am now about to read to your Lordships does not appear upon the consultation of the Council, previous to his having gone up to Benares, but in the course of the narrative of the events that had happened there, by Mr. Hastings himself. He refers to Mr. Wheler for a conversation that had taken place between them previous to his going up, and, in consequence of that reference, Mr. Wheler says,— 12 JUNE 1792. Mr. Wheler in 1780.

"I have the pleasure to comply with the Governor General's request, and will cheerfully record in this place what I at present recollect to have passed between us at the time and on the circumstances that he mentions. I well conceive that, upon the eve of the Governor General's departure from Calcutta, the subject of the conduct of Cheyt Sing, late Rajah of Benares, was a principal subject of confidential discourse between us"—

I should state that, at this time, the Council consisted only of Mr. Wheler and Mr. Hastings: Mr. Francis had left India for England—

"and that he bespoke my support of the measures which he intended to pursue towards him. I recollect that the Governor General thought the Rajah's offences were such as to require early punishment, and, as his wealth was great and the Company's exigencies pressing, it was thought a measure of policy and justice to exact from him a large pecuniary mulct for their relief. The sum to which the Governor declared his resolution to extend the fine was forty or fifty lacks. His ability to pay it was stated as a fact that could not admit of a doubt; and the two alternatives on which the Governor declared himself to have resolved, if Cheyt Sing refused to comply with the requisition, were, to the best of my recollection, either a removal from his zemindary entirely, or, by taking immediate possession of all his forts, to obtain out of the treasure in them the above sum for the company." *

My Lords, this conversation, therefore, your Lordships perceive, passed between Mr. Hastings and Mr. Wheler at the close of the year 1780, and before Mr. Hastings went up to Benares—Mr. Wheler states that it was *on the eve*, which, of course, must have been a few days before—with this intention, therefore, as communicated by Mr. Hastings to Mr. Wheler, and of which the only evidence now before your Lordships is drawn forth by a reference made by Mr. Hastings to Mr. Wheler, for the purpose of informing the public what were his, Mr. Hastings', intentions, when he left Calcutta and went up to Benares.

My Lords, with respect to the events that have happened

* Printed in Mr. Hastings' "Narrative of the Insurrection in Benares," p. 13.

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The Benares Narrative to be received as evidence in its integrity or not at all.

at Benares, your Lordships know that there is a very full account of them upon your table, contained in a printed paper called the "Benares Narrative," and which paper was originally put in as evidence by the honourable Managers themselves. My Lords, upon the part of Mr. Hastings, I feel it my duty humbly to submit, that it is not competent to the honourable Manager to take particular parts of passages of this Narrative, and to rely upon them as evidence against Mr. Hastings, without admitting that the whole Narrative is to be considered in the same light—an evidence for him as well as against him. My Lords, I apprehend that no rule of law, and certainly no principle of justice, can be more clear than this—that the whole of every man's account or confession should be taken together, and not by parcels—the only way in which the honourable Managers can make use of this, as evidences of what they call the confession of Mr. Hastings. And, therefore, upon that ground, I do humbly but confidently submit to your Lordships that, not merely those particular parts which the honourable Managers have alone selected are to be considered as evidence against Mr. Hastings, but that, this being the account given by Mr. Hastings himself, it must be taken the whole of it together—as well that which may be supposed to explain his conduct favourably as that which may operate against him. There is just now handed to me an opinion of law too clear to need any support—Mr. Serjeant Hawkins's Crown Law—

"It seems an established rule that, wherever a man's confession is made use of against him, it must all be taken together and not by parcels."

But the honourable Manager, in opposition to this doctrine, which I conceive to be a fundamental principle of the criminal law of England, maintains that a man's confession is to be taken by parcels, and not the whole of it to be taken together. I shall therefore beg, in the course of the observations which I shall take the liberty to submit to your Lordships, to consider this in every part of it as evidence, on every principle of law. Not that, as evidence, it could originally have been put in by us. Undoubtedly not: it is an account given by Mr. Hastings of his own conduct. But, being put in by the honourable Managers as evidence against him, we have a right to avail ourselves of every part of it—those parts that are in his favour as well as those that they may consider otherwise.

Your Lordships know that this consists of two parts;—first, the narrative; and then, an appendix, which contains a great number of different papers, and, among them, many affidavits of natives and others, in which they depose to their knowledge of facts that were connected with transactions which took place at Benares. We have had much discussion already with respect to the subject of these affidavits. Now, it seems to me that nothing can be more clear than that, standing where I do and occupying the ground with which the honourable Managers have furnished me, I am intitled to contend, if it be necessary, that these are, in fact, the affidavits of the persons whose affidavits they purport to be; because they must be taken to be that which they are described in the Narrative and which they are proved to be, till the contrary is shown. But this seems to be also very immaterial, for your Lordships will find, in referring to various parts of the evidence, that the honourable Managers have themselves made use, not only of this Narrative, but of the appendix, upon a great variety of occasions. In particular, your Lordships will find that, in page 107 of the printed Evidence, they introduce the Narrative in these terms:—

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Use made of the Narrative by the Managers.

"They then proceeded to state, that Mr. Hastings' reasons for going to Oude and the credentials which he took with him for his authority having been read to the House, it appeared they had now traced the matter down to the eve of his departure for Benares. They should next give in evidence, therefore, the transactions which happened at Benares, contained in a paper called a 'Narrative of the Transactions of the Governor General at Benares.'"

And your Lordships will further find, in pages 271, 272 and 273, there are extracts read from the Narrative as proving particular facts; and then, following these extracts, in page 273, there are various affidavits introduced by the honourable Managers themselves, in this way:—

"Then the Managers for the Commons acquainted the House they should next read an affidavit of Major Palmer, to prove the allegation in the first Article of the Charge, which states the intention of the Defendant to extort a large sum of money, by way of fine, from the Rajah Cheit Sing."

They afterwards read the attestation of David Anderson, Esq. And, in page 274, your Lordships will also find this:

"Then the Managers for the Commons acquainted the House they should next proceed to read several affidavits of natives."

12 June 1792. Describing [them] themselves in that way and reading them also for the purpose of proof, because they go on to state that the first they should produce particularly respected the escape of the Raja Cheyt Sing and what happened upon that escape, and all of them went on to prove the massacre and confirm the Narrative in other particulars.

Now, I apprehend that nothing could be more clear than this—that, if it be in the power of the Manager to select particular passages from the Narrative, and also out of the number of affidavits to bring forward particular affidavits, and to offer them to the House as proof of facts, precisely upon the same principle is it as competent for me to offer to your Lordships other passages from the Narrative as proof of facts and other affidavits. It is impossible that any line so absurd as this can be drawn in any court of human judicature whatever—that the Managers can have a right to take just as much of the Narrative as they can pick out here and there, making, in their opinion, against Mr. Hastings, and that they can say to your Lordships, "Thus much you are to believe, but all the rest you are to reject." There can be no such distinction in point of evidence as that. It is altogether evidence, or it is not evidence at all. I admit there is one way in which the honourable Managers, if they had offered it in evidence, might have created some difficulty in the case; if it had been put in merely for the purpose of proving that Mr. Hastings had in every instance given a false account of what happened at Benares, and that they relied upon his guilt with respect to his demeanour upon that occasion, then it might have been more difficult for me to point the evidence to a different purpose than that for which it is produced, and to say "this can be made evidence of facts on behalf of Mr. Hastings." But, your Lordships perceive, the evidence was offered upon no such plan nor applied to any such purpose; but, on the contrary, the honourable Manager, who was so extremely averse to our calling these affidavits or reading them to prove any part of our case, has expressly introduced them as facts, and declared it was not for the purpose of impeaching but of confirming the Narrative as composed by Mr. Hastings himself. Upon this observation—I will leave it to your Lordships to judge whether fairly or not—I contend that every part of this Narrative is to be considered as evidence, whatever way it may apply. I have been, as your Lordships will perceive, occasionally, in the course of the argument which I have

Purpose to which it might have been applied.

had the honour of submitting to you, very much in the habit of conceding, whenever I possibly could, every thing to the several able and honourable persons to whom it is my misfortune to be opposed. I might, therefore, upon this occasion as upon former occasions, give up to the Managers all the support that I think myself intitled to derive from the Benares Narrative and the affidavits that are annexed to it, in point of argument. If the gentleman wishes me to abandon that ground I can safely do it for my cause, and leave him to enjoy it in solitude, without my strength being in the slightest degree impaired; because I undertake to prove, from all the evidence now upon your Lordships' Minutes, that it is a striking fact in support of the defence of Mr. Hastings that his own Narrative of what happened at Benares, as confirmed by all these different affidavits, is in every respect infinitely short of the truth, as it comes out at your Lordships' bar by the several witnesses who have been called? I state that distinctly for your Lordships' recollection:—in comparing the testimony of those several witnesses with the account given of his transactions in the Benares Narrative, I say, the case comes out infinitely stronger upon the testimony of these witnesses at your Lordships' bar than it originally stood upon the face of this Narrative and these affidavits, the subject of so much hostility on the part of the honourable Manager!

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Evidence of the Narrative less favourable to Mr. Hastings than that of the witnesses.

Let him, therefore, take from me that part of the Narrative which makes in favour of Mr. Hastings—let him feast upon that other part of it which suits his cause; I have no objection that it should be severed for such a purpose. Therefore I will argue the case chiefly upon the other ground, which I hope the honourable Manager will not also take from me; for I know not upon what principle he will be able to contend that the several respectable persons that have appeared at your Lordships' bar are not to be believed: if he does not go the length to say that, I think I may defy human ingenuity to say that there is not a complete defence of Mr. Hastings. Then, arguing it upon that ground, I shall endeavour to lose sight of the Narrative entirely.

Appointment of Mr. Markham as Resident at Benares.

Shortly after this conversation with Mr. Wheler, Mr. Fowke being then the Resident at Benares, Mr. Markham was, I believe, appointed; and your Lordships will find in the printed Evidence that Mr. Markham states that he was despatched to Benares upon the 1st of February, in the

12 June 1792. year 1781. That was the time when Mr. Markham went to Benares to succeed Mr. Fowke. At this time, your Lordships must suppose that Mr. Hastings—if there be any truth or foundation in this Charge—had meditated a prosecution of that malice which he had before entertained against Cheyt Sing, and meant by the means of Mr. Markham to carry it into effect.

Before I enter into an examination of what passed in the first meeting between Mr. Hastings and Mr. Markham, or of that which in point of time even preceded that meeting—the instructions given by Mr. Hastings to Mr. Markham upon his leaving Benares—I will take the liberty just to have recourse to the distinction which I stated to your Lordships, in the beginning of what I offered to the Court, in respect to the different parts of this case. Your Lordships will now perceive that, having gone through the examination of all the several demands, I am coming to the conduct of Mr. Hastings, at the time he went up to Benares and whilst he was there. The first part of the case consists in the assertion of the right upon the part of Mr. Hastings, and in the enforcement of it, to a certain degree. The latter part of it consists in the infliction of that punishment upon the Raja which he conceived it to be his duty to inflict, in consequence of a violation of that fidelity which he conceived him to owe to our Government.

Conduct of Mr. Hastings at Benares.

Review of the charge of malicious motive.

I beg here to stop and take breath, as it were, for a moment, to look back upon the ground I have passed. Your Lordships will recollect what is the nature of the imputation of malice in this case. It proceeds from this cause—that, some time in the month of June, in the year 1777, a messenger was sent down by Cheyt Sing to General Clavering at Calcutta, to congratulate him upon his supposed accession to the Government; and, in respect to this malice, thus originating in the year 1777, Mr. Hastings is stated to have made the first demand, and so, progressively, all the other demands in the order in which they arise. Therefore, I think I may fairly say, if I have satisfied your Lordships that it is utterly impossible, upon a fair examination of the subject, to suppose even for a moment that Mr. Hastings could be actuated by a motive so infernal as that, upon the occasion of any one of these demands, it follows, either that the honourable Managers must abandon the ground of malice as it applies to the subsequent proceedings at Benares, or they must be able to state that a new cause of malice had sprung

up in the breast of Mr. Hastings, different from the former, previous to the time of his going up to Benares. Because if, examining the conduct of Mr. Hastings with respect to these various demands, I have satisfied your Lordships that up to that period of time there was no malice whatever, then I shall call upon the Managers to point out to your Lordships what new event had happened, subsequent to that period of time, to which they can impute a fresh cause of malice in the mind of Mr. Hastings. Therefore, I beg leave to say that, if I have succeeded in repelling the imputation of malice hitherto, the original imputation under which these demands were stated to have been made cannot apply to the conduct of Mr. Hastings in any one respect, whatever may appear to be the nature of it, in the subsequent proceedings, when he went up to the Raja in the year 1781. 12 June 1792.

Some time, then, in the month of February, in the year 1781, Mr. Markham was appointed to be the Resident at Benares. Whether the appointment was proper or otherwise, or whether, from all your Lordships have seen and heard of that gentleman, you will think that he was precisely the instrument to select to carry this dark and malicious scheme into execution, I leave it to your Lordships to decide. But this much I will venture to state—and I protest that it is a compliment I would not pass upon him if I did not think he deserved it—that, in the course of my short experience, I never heard an evidence given by any man whatever that did more honour to his head or to his heart.

My Lords, I think that it will turn out to be no very slight assistance—if, indeed, it wanted any—to the evidence of Mr. Markham upon this occasion—the very singular event that happened upon the last day of his examination.

My Lords, it then appeared that, after Mr. Markham had gone through a very long examination of four days, still some fresh evidence was to be brought forward. What that examination was, to your Lordships who were present I need not point out. I believe, during the course of four days he stood—and without being moved in a single instance from his ground—the discharge of all that powerful artillery which is unfortunately so often poured, when it can effectually be, upon every witness we produce. But, I thank God! I may venture to state that, though every question that was put went to the most private and confidential communication, though they went to drag forth every secret rom his heart that might ever have been lodged there by

Evidence of Mr. Markham.

12 JUNE 1792.

Mr. Hastings, Mr. Markham shrunk from no one question of the sort. He told your Lordships fairly all he thought and all he knew; and your Lordships, upon the investigation of that evidence, will have hereafter, under the observations that I shall submit, to see how it applied to the conduct of Mr. Hastings.

Yet, upon the part of Mr. Markham, there is one circumstance which I think it necessary to explain. After an examination of, I believe, four days, when Mr. Markham was upon the point of coming into this Court to undergo the examination of the fifth, a letter was put into his hand, purporting to be a letter from one of the honourable Managers, enclosing an account of this transaction that had been written by Mr. Markham many years ago. The letter in question, and which I now conceive to be a most material piece of evidence upon the part of Mr. Hastings, in the respect that I shall presently explain, will be found in page 1754 of your Lordships' printed Minutes. The letter of the honourable Manager also precedes it, and in which he states that—

Letter of Mr. Markham to the Archbishop of York.

"Being in the country last Sunday and Monday, in looking over some papers, I found the inclosed letter from you to the Archbishop of York. His Grace spoke to me [of it at Court, and sent it to me, as I recollect, the evening of our conversation, as a member of the Select India Committee, for my information in that character, as an ostensible letter upon a public transaction, and containing no private or family matter whatsoever. It did not appear to differ, excepting matters of opinion, in any of the parts, which I deemed very essential, from the accounts I had then received] from various quarters."

So that we have the admission of the honourable Manager, that the letter then written by Mr. Markham in confidence to the reverend person to whom it was addressed coincided, except in opinion—that is, in all those points which are connected with the veracity of the gentleman, the relation of the facts exactly agreed—with all the accounts the honourable Manager had himself received. He goes on:—

"[I therefore thought no more of it, until by mere accident I found it at the time and place I mentioned. It is written in a clerk's hand, though signed, as I conceive, by yourself. I send it as I received it, and] I keep no copy."

Mr. Markham's evidence corroborated by his letter.

My Lords, I can only say, with respect to this letter thus found in looking over some papers, by mere accident, upon the fifth day of Mr. Markham's examination, that certainly it is a very fortunate occurrence, a very happy accident, with respect to the testimony of that gentleman; because, though

it was put into his hand for the purpose of correcting, if he thought fit, any parts of the evidence that had been given, I think that, when your Lordships come to compare the account given at your bar with this letter which was written ten years before, it will be matter of complete astonishment to you, how it was possible for the human memory, at such a distance of time, to relate material events in a manner so precisely agreeing upon each different occasion. Instead, therefore, of this letter being any impeachment of the testimony of Mr. Markham, I appeal to it as the strongest confirmation, and congratulate myself, on the behalf of Mr. Markham, that the employment of the right honourable gentleman's leisure hours in his retreat enabled him, at the time he did, to discover and bring forward this letter, which was put into his hand by the reverend person to whom it is no less the pride than the honour of Mr. Markham to be related. 12 June 1792.

Now, let us hear what is the account he gives of the interview he had with Mr. Hastings previous to his going up to Benares. Mr. Markham has distinctly told your Lordships that, on his honour—on his oath—Mr. Hastings, in a conversation that he had with him previous to his going up to Benares, and in which he was endeavouring to point out to him in what manner he should discharge the duties of his office, endeavoured particularly to impress upon his mind mildness and moderation. "These," said Mr. Markham, "were what Mr. Hastings particularly endeavoured to impress upon my mind, in my general conduct to the natives and in my treatment of them." But he went further. Mr. Hastings, the man charged at this moment with entertaining the blackest malice against Cheyt Sing, and selecting Mr. Markham as an instrument to carry it into execution, at that very time particularly told him, he thought Cheyt Sing had been treated too harshly by Mr. Graham, and recommended it to him—Mr. Markham—to behave more gently and leniently to him in future. This was the advice to Mr. Markham at the very moment of his malice, and at the very period when selecting the instrument that was to put it into execution! Give me leave to say it was thus that Mr. Hastings always worked when he had any point to carry into execution—by impressing upon their minds mildness and moderation, and by pointing out that treatment of those who were placed under their charge.

Moderation and leniency recommended to Mr. Markham by Mr. Hastings.

My Lords, here I put the honourable Manager to this

12 JUNE 1792. dilemma:—either he must contradict the evidence of Mr. Markham and assert that, for some cause or other—Mr. Markham will pardon me if for a moment I make the supposition—his testimony is not to receive credit from your Lordships; or it will be for your Lordships to say, admitting that evidence to be intitled to credit, whether, at the moment when Mr. Markham was deputed to Benares by Mr. Hastings, and he was saying to him "be mild and moderate in your conduct to this man," he was sent for the purpose of carrying into execution these foul and infernal schemes.

Written instructions from Mr. Hastings to Mr. Markham.

My Lords, beyond all this, it appears that Mr. Markham had also written instructions from Mr. Hastings, and, in the course of those instructions, which will be found upon your Lordships' Minutes, in page 1709, he appears to have given him particular directions with regard to these two circumstances. First, your Lordships will find—

> "Cuttwally"—which your Lordships know to be the court of criminal justice—"to appoint a person to attend and take minutes of the proceedings; and inform the Rajah that it is expected that he will cause justice to be administered and pay more attention to the peace of his country."

There was also another instruction, which is the third:—

> "To insist on his punctual obedience to the order to provide us with a corps of cavalry."

These were the only instructions then that Mr. Markham received from Mr. Hastings, whether verbal or written, at the moment of his departure for Benares, in the month of February, in the year 1781. They were to enforce upon the part of Government that demand of cavalry, which, under a resolution of the Board, it had been determined to make; and he was to watch over the vigilant administration of justice in his own country in future, by appointing persons to attend the court there and take regular minutes of what passed, for the purpose of transmitting them to the Resident, in the first instance, to be by him [forwarded] to the Board at Calcutta, if it should be necessary to reform any abuses.

Complaints respecting the police at Benares.

I should have stated that, previous to this time, a great number of complaints had been transmitted to the Board and to the different Residents, and also to Cheyt Sing himself, by Major Eaton and other officers, with respect to the police of Benares. I would not weary your Lordships by going through the particulars of these complaints. They

stand upon your Minutes, in different letters from Major Eaton, written in the close of the year 1780 and the beginning of 1781, and to them I beg leave to refer; only reminding your Lordships that it appears that the most material of these letters, in which he stated that the natives of Cheyt Sing's country were almost universally in a state of rebellion towards the English, was a letter written in the month of November, in the year 1780, before the instructions given to Mr. Markham, and, consequently, long before the time of this conversation between Mr. Hastings and Mr. Wheler. 12 June 1792.

On the subject of the police—here again I would also beg leave, without going through it particularly, to refer your Lordships to the evidence of Mr. Markham. It is well known to your Lordships that it was one of the conditions upon which Cheyt Sing was to hold his zamindary, that he was to keep up a good police throughout his country; and it is equally clear, upon all the evidence that you have heard, that that police, instead of being good, was precisely as bad as possible. But I do not merely rely upon this as proving generally that the police was bad, but I think that, if your Lordships attend to the evidence that relates to this part of the case, you will find that it was particularly so with respect to every English gentleman who had occasion either to be in the zamindary or the city of Benares; which I impute to that general spirit of disaffection and rebellion that had existed in the country, excited among the subjects of Cheyt Sing by their knowledge of the disposition which at that moment he entertained with respect to the English. It was upon that ground more than any other, but upon both, I conceived it material for your Lordships to advert to the complaints made by Major Eaton in 1780.

Ineffectual application to Cheyt Sing for cavalry.

Under these instructions, then, Mr. Markham went up to Benares; and your Lordships have it in evidence that he communicated to Cheyt Sing the instructions that he had with respect to the demand of cavalry; and, though he applied to him day after day—though Mr. Markham said he made use of every persuasion which one friend could have employed to win over another to his purpose—from that time down to the hour that Mr. Hastings went up to Benares, he, Mr. Markham, could never get him to muster a single man. But, so far from it, your Lordships know that, in the beginning of the year 1781, even before Mr.

12 JUNE 1792. Hastings went up to Benares, he had received accounts from Mr. Markham that he, the British Resident, had received intelligence, which he deemed to be authentic, that he was expressly withholding this cavalry from the British nation for the purpose of assisting the Mahrattas, who, it was reported, then had invaded our provinces.

Motive, given in the Narrative, of Mr. Hastings' conduct towards Cheyt Sing.

It becomes necessary, then, for Mr. Hastings, under the circumstances of the conduct of Cheyt Sing, to consider what resolution he should come to, upon the part of that Government whose agent he was;—and your Lordships will find that, in the Benares Narrative, page 112, Mr. Hastings gives an account of the motive which operated upon his mind at the moment that he proposed to pass this fine upon Cheyt Sing. And he states it in this way:—after having marked what were the offences of which the Raja had been guilty, he says,—

"These instances of contumacy and disobedience, criminal as they were in themselves and aggravated by the extreme and known distresses and dangers of the superior state, to which he owed not only personal fealty, but every voluntary aid which all the resources of his zemeedary could contribute, [appeared to me of less consideration as such than as they were evidences of a deliberate and systematic conduct, aiming at the total subversion of the authority of the Company, and the erection] of his own independency on its own ruins."

An allegation which the Charge treats as extravagant, untrue and incredible.

"This had been long and generally imputed to him. [It was reported that he had inherited a vast mass of wealth from his father Bulwant Sing, which he had secured in the two strong fortresses of Bidjeygur and Lutteefpoor, and made yearly additions to it: that he kept up a large military establishment both of cavalry, of disciplined and irregular infantry and of artillery, that he had the above and many other fortresses of strong construction and in good repair, and constantly well stored and garrisoned; that his aumils and tenants were encouraged and habituated to treat English passengers with inhospitality and with enmity; that he maintained a correspondence with the Marattahs and other powers, who either were or might eventually become, the enemies of our state; and, if the disaffected zemeedars of Fyzabad and Behar were not included in the report, which I do not recollect, we have had woful proof that there was equal room to have suspected the like intercourse between them; and, lastly, that he was collecting, or had prepared, every provision for open revolt, waiting only for a proper season to declare it, which was supposed to depend either on the arrival of a French armament] or on a Marattah invasion."*

My Lords, all these different allegations, which amount, perhaps, to the number of between fifteen and twenty, have

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* "Narrative of the Insurrection in Benares," p. 7,

hitherto been treated, upon the part of the honourable Manager, as so many fictions, and nothing better, brought forward after the revolution in Benares to justify the conduct of Mr. Hastings with regard to Cheyt Sing. In answer to that assertion, I beg to refer your Lordships to all the evidence that is now upon your Minutes; and I undertake to say, imploring you in the most rigid spirit of justice to make the most scrupulous examination, that, upon the comparison of every one of those different assertions with the evidence as it now stands upon your Minutes, it is, not only strictly true, but short of the truth, in almost every material point.

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Confirmed by evidence.

Your Lordships have only to refer to the correspondence of all the different Residents in every one of the various years—from the year 1777, when Mr. Graham first went up, down to the year 1781, when the unfortunate massacre took place—and you will find that they were constantly transmitting to Mr. Hastings their suspicions of the fidelity of this man; that they went the length of stating that he was suspected of entering into a correspondence with the Mahrattas; and to all that testimony, without going particularly through it, I beg to refer your Lordships, as proving strongly that which I took the liberty of stating some time since—that the evidence now brought forward by Mr. Hastings, consisting of the testimony of the persons that have been called, comes out much stronger than it had been stated in this Narrative. I am, then, warranted to say that these instances of contumacy and disobedience were evidences of a deliberate and systematic conduct, aiming at the total subversion of the authority of the Company, and aiming to raise his own independency upon its ruins.

What, then, did it become Mr. Hastings to do from that belief strongly impressed upon his mind from all the evidence upon your table, at a time when they were surrounded with enemies on all sides, in a season the most favourable for change? Was he to suffer him, in the possession of undisturbed wealth and the plentitude of power, to hold back from the British Government those forces he was assembling, and which the next day might be turned against the heart and bosom of our possessions? It was, then, under this belief of disaffection [towards] the English Government, warranted and justified by the evidence your Lordships now have, that in the year 1781, in the course of this conversation with Mr. Wheler, Mr. Hastings, believing Cheyt Sing to be

Circumstances inducing Mr. Hastings to impose a fine upon Cheyt Sing.

12 JUNE 1792. a disaffected person and that he had been guilty of instances of contumacy and disobedience to the English Government, came to the resolution of imposing that fine upon him which is, in some respects, the subject of the present Charge.

With respect to the magnitude of the fine, I am not going into an examination of that at the present moment; it is extremely difficult to obtain precise and correct ideas upon that subject; but this I may fairly state, that a fine imposed by way of punishment differs widely from damages given in a civil suit, which are merely by way of compensation. It is meant as a compensation to the public, but it is also meant as something more, and must also include the punishment of the individual. Whether, therefore, the fine be too large or too small must, in every case, depend upon the nature of the offence, and not only that, but upon the precise circumstances in point of poverty or wealth of the person who is to be the object of that fine. But we know perfectly well that poverty and wealth are relative terms. When we say that one man is rich or that another is poor, we mean, with reference to the general state of the society in which they live. The state of each particular society forms, therefore, always the standard of wealth. But nothing can be more common than for ideas that are at first merely relative in time to become absolute, and to be applied to a different state of things, when the relation that made them true originally no longer subsists. Whether this fine, therefore, was too large or otherwise, will depend upon the most accurate investigation of the situation of this man; considering the nature of his offence—which was nothing short of a design to join with the enemies of the British nation, to bring war into the heart of their possessions—and considering the extent of his country in point of revenue, and the wealth he received from his father and enjoyed at that moment.

Proposed amount of the fine.

To an English ear, the sum of fifty lacs of rupees may, upon the first sound of it, without an inquiry into all the circumstances of the case, appear somewhat large; but it will sound large to hear that this was a zamindary which yielded annually the sum of fifty lacs of rupees; and that, upon the occasion of the accession of this very man to the zamindary of Benares, no less a sum had been paid by him to Suja-ud-Dowla, at that time, than seventeen and a half lacs of rupees, with an annual increase of two and a half; making, upon the lowest computation, altogether a sum equal to that which, by way of fine, Mr. Hastings proposed

to inflict upon him, at the moment he was satisfied of his disobedience and disloyalty to us. 12 JUNE 1792.

But I trust I shall be able hereafter to show that, whether this fine was large or small, moderate or excessive, is a fact of no consequence, but is to be put entirely out of the case; and I maintain that this man's conduct had been such as, upon every principle of policy and justice, to induce a forfeiture of all the possessions that he held, and that, therefore, this was a measure far short of that which—pursuing the utmost extent of justice—Mr. Hastings would have been warranted to inflict. This, however, was the sum which, in conversation with Mr. Wheler, Mr. Hastings mentioned in the year 1781, before he went up to Benares. It appears, from the evidence of Mr. Markham, that he met him at Bhagulpore, and, in the course of their conversation together, Mr. Hastings also explained to him what were his intentions with respect to Cheyt Sing.

Conversation with Mr. Markham concerning the fine.

But, previous to this time, your Lordships will find that Mr. Markham distinctly states, that he had apprised Mr. Hastings, that every endeavour to prevail upon this man to furnish a single horse had been absolutely vain and fruitless. Nay, Mr. Markham goes further, and says, that at that moment he imparted to Mr. Hastings doubts of the fidelity of Cheyt Sing. Mr. Markham, however, states that, upon the first mention of this sum, it appeared to him to be large—that he conceived Mr. Hastings had fixed it in his own mind as a proper fine to be imposed, under an idea that the revenue of Cheyt Sing was much larger than what it actually was—that, upon this, Mr. Hastings said—"We will talk more upon that subject when we come to Benares."

Meeting of Mr. Hastings and Cheyt Sing at Buxar.

With this explanation, therefore, of his intentions with respect to this fine, and intending to have a further conversation upon the subject, when he arrived at Benares, with Mr. Markham, directing him, in the meantime, to prepare the most accurate statement he could get with respect to the state of the revenues in his country, Mr. Hastings and Mr. Markham parted at Bhagulpore. From Bhagulpore Mr. Hastings proceeded to Buxar; and there your Lordships know that the Raja met him—not attended, as usual upon these occasions, with a common suite, or what is called a sawari only, but, as it now appears, upon the evidence upon your Lordships' Minutes, with a force of 2,000 men, [comprising] a body of 600 cavalry, who were to attend their motions upon the side of the river. This very

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Cheyt Sing is accompanied by 2,000 men.

man who, but the day before, would not furnish a single horse to the British Government, and pretended he had none to spare, was attended by 600 cavalry and a number of infantry—infantry which made his force near 2,000, for the purpose of meeting Mr. Hastings at Buxar! Was this meant as a mark of respect to Mr. Hastings? Surely not! Your Lordships at this moment cannot have to be satisfied of that; but it was meant for the purpose which was stated in some of these affidavits—to prevent Mr. Hastings from carrying into effect any resolution which he, the officer of the public, had intended on the part of that public to execute with respect to this man.

I now put this to your Lordships distinctly, for your consideration:—at that moment, Mr. Hastings having previously formed a resolution to put Cheyt Sing under an arrest, when his boats were lined with armed men to the number of 1,300 or 1,400, and when these cavalry were upon the banks of the river attending the motion of the boats, do your Lordships not believe that any attempt to put Cheyt Sing under arrest, in the sight of this armed force which he had himself thus assembled, would have been attended with the instant destruction of Mr. Hastings and every person who accompanied him whatever? Or will your Lordships, on the contrary, go the length of believing that, though he had actually assembled all this force to attend him in his progress when he was to give Mr. Hastings a meeting, if an attempt had been made to arrest him, all this force would have stood by and seen it done, and dispersed at the requisition of the Raja himself? It is not, I think, too much to concede to me, that we get to the time in which we show clearly that any attempt to take this man, or put him under an arrest, would be attended, in the first instance, with open resistance on his part, and the destruction of the British Governor, who was then upon the spot for the purpose of executing the measure which he deemed it expedient, on the part of the public, to effect.

Impossibility of putting him under arrest.

I am anxious that your Lordships should distinctly understand me upon this part of the case—and, if the argument warrants it, agree with me in the conclusion I draw; because I think we have got a great way in the case, that there was a time when, if that had been attempted, the destruction of Mr. Hastings and every English gentleman who attended him would unavoidably have followed. Visits of civility, and little more, passed upon this occasion between

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Separate departure of Mr. Hastings and Cheyt Sing for Benares.

the Raja and Mr. Hastings. They parted at Buxar, and each pursued separately his way to Benares. On his arrival there, it is distinctly stated in the affidavit of a person who commanded a considerable body of these forces at the time, that this body of men, who had attended Cheyt Sing in the manner I have described, were, upon the day when the massacre took place, around Sivalaya—the very spot afterwards stained with British blood—and were ready for action—ready for whatever might happen—part of this very force which attended with Cheyt Sing, for the purpose of giving Mr. Hastings a meeting at Buxar.

When Mr. Hastings arrived at Benares, he thought it necessary to deliver to Cheyt Sing a copy of the accusation which he meant to prefer against him. But, previous to this, it will be necessary for me to state distinctly in what respect the conduct of Mr. Hastings is supposed to be criminal as to this transaction. And here the Charge again states, that—

Criminal motive imputed to Mr. Hastings in his journey to Benares.

> "Mr. Hastings, under colour of the above authority"—that is, the delegation,—"and under certain false, wicked and malicious, pretences, with a view to harass, ruin and oppress, the said Cheit Sing, and with an intention to extort certain large and enormous sums of money from him, without any just or reasonable cause, although the said Cheit Sing had a short time before, knowing the malice of the said Warren Hastings, offered to pay the sum of twenty lacks of rupees for the service of the East India Company, did wickedly and maliciously undertake a journey to the upper provinces, and particularly to the province of Benares."

Your Lordships, therefore, perceive that the criminal motives which are imputed by the Charge to the conduct of Mr. Hastings are specifically these:—first, that he undertook the journey to Benares, and that all that happened there was expressly and for the sole purpose and design—originating in the same malice which had actuated his conduct before to complete the ruin of this man. Beyond all that, it states that he had also formed an intention to extort certain large or enormous sums of money from him, without any just or reasonable cause. After having stated this as a criminal motive which actuated his conduct at that moment, it proceeds to state those facts as done in the prosecution of the motive:—first, that he did wickedly and maliciously undertake a journey to the upper provinces. Secondly, that, upon his arrival at Benares, he did falsely accuse the said Raja of certain acts of misgovernment and disaffection, which were contained in a paper which he then delivered to him. Thirdly,

12 June 1792. that, though the Raja desired to justify himself against that accusation, yet in substance Mr. Hastings refused to hear him, and that he did arbitrarily and tyrannically order him to be put under an arrest in his own palace. It then states, that, in consequence of this, there was a rising of the populace, during which part of the guard were attacked and killed, and the Raja himself fled. It then goes on to allege that, in consequence of this, an unjust war arose, which ended in the final expulsion of the Raja from the zamindary.

Now, my Lords, before I enter into a particular examination of the several criminal allegations in this Charge, and of those assertions of facts which are to support the criminal allegations, it will be necessary for me to point out for your Lordships' consideration what the Charge is. The Charge is, that he did this with an intention to ruin Cheyt Sing—in gratification of his malice merely. It is not, therefore, whether your Lordships, upon a full investigation of the conduct of Mr. Hastings, shall be satisfied that you would not have acted in the same way—difference of opinion is not material in this case—but you must be satisfied that the conduct of Mr. Hastings originated in malice and nothing else, and that it had no other end or design but the ruin of this man;—the conduct of Mr. Hastings, such as it was, must lead you unavoidably to form that inference;—and then, if I have succeeded, as I before pointed out, in repelling the inference of malice up to this time, it will be for your Lordships to discover from what fresh cause that malice could possibly have originated in the mind of Mr. Hastings, which had no place there in the years 1778, 1779 and 1780. Your Lordships must also be satisfied of this—that he had an intention to extort certain large and enormous sums of money from him. And here I would beg leave to state that two very distinct and opposite opinions may be formed upon this subject.

Definition of the Charge.

There are those who think that Cheyt Sing was liable to the several demands, and that, in respect of his disobedience to the orders of Government in not complying with them, he was liable to have some fine imposed upon him. There are those again who think—and of that number are the Managers, and upon this idea is the whole of the Charge formed throughout—that we had no right whatever to make any demand, and, consequently, that Cheyt Sing was justified in refusing to comply with demands made without right. But your Lordships will see that no two things can be more

Difference of opinion as to the right to inflict a fine.

distinct than these—the case of a man who is liable to some fine which is to be imposed according to the circumstances of his case, and, on the contrary, the case of a man who is liable to none. They, therefore, who maintain, as this Charge does, that the conduct of Mr. Hastings, from beginning to end, was a violation of his duty and a breach of trust, and that he had no right to make these demands, nor was Cheyt Sing liable to them, undoubtedly act but consistently with themselves in stating that he meant to extort from him large sums of money; because the demanding any sum of money when he was not liable to any would, undoubtedly, constitute an aggravation of the original offence. But, to those who think Cheyt Sing liable to this fine imposed upon him, this Charge is not made to meet that case; because it is not adapted to the instance of an excess of fine where some fine must be imposed, but it goes upon an idea that Cheyt Sing was not liable to any fine whatever. Therefore nothing can be more different than to say, "you have no right to impose a fine at all," and then to assert, "true, you had a right to impose a fine, but what you had imposed was too excessive." 12 June 1792.

The Charge founded on the supposition of absence of right.

This Charge, therefore, is not founded upon the idea of the honourable gentleman to whom I alluded, who differed with the honourable Manager upon the question of right, because he went to the full length of maintaining the right, on the part of the Government, to punish the delinquency of Cheyt Sing; but, says the Manager, "he was not liable to any fine whatever." The case, therefore, is adapted to the doctrine maintained by the Manager; that is, that, from the beginning, Cheyt Sing was not liable to these demands, and that, therefore, everything that followed was upon the part of Mr. Hastings a breach of his duty; but it is not adapted to meet the opinion of those who think that Cheyt Sing had been guilty of disobedience to the British Government and was liable to some punishment, but that the punishment intended erred only in its excess. Looking at the form and structure of this Charge, your Lordships will find that it cannot possibly be applied to any such purpose.

Question of excess of punishment.

With respect then to those two intentions which are stated as the criminal motive of the Charge, [upon] one—that of malice and a design to ruin Cheyt Sing—I shall not trouble your Lordships, in this part of the case, with any further observations, in addition to those that I have already made; because, undoubtedly, it stands precisely on the same ground

Charge of malice.

12 June 1792. on which it was placed on the occasion of the several demands. If he entertained malice, then he entertains it now: if he does not now, neither did he then. It would be a continuation of the same original malice or none at all. And, therefore, if I have satisfied your Lordships that, at the moment of making the first demand, and so downwards, there was no malice, you cannot believe that malice sprung up at this moment in the mind of Mr. Hastings, for it is not attempted to ascribe it to any recent cause whatever.

Charge of extortion.

It seems, therefore, confined, in respect of the real criminal motive, which [alone] is at all worth discussing, upon the face of this Charge, to the second allegation—that is, that Mr. Hastings meant to extort from him certain large and enormous sums of money, without any just or reasonable cause; that is, without any just or reasonable cause to extort from him any sum of money whatever; because this Charge, which states certain large and enormous sums of money, does not admit that Cheyt Sing was guilty of an offence compared with which the fine intended to be imposed was large, but it says, "without any just or reasonable cause." Now, it is a contradiction in terms to say a person can have a just and reasonable cause to inflict an enormous fine; and it leads to this conclusion—that the Charge is framed entirely upon an idea that, not fifty lacs of rupees, but any sum whatever, that Mr. Hastings thought fit to extort from him, would have been a violation of his duty and sufficient to ascertain the criminal motive put in the front of this Charge.

With respect, however, to this intention, nothing can be more clear than this:—first of all, I am willing to admit, for the purpose of argument, that which is directly contrary to the fact, namely, that it was an intention certain and fixed, not to be altered by any subsequent events. I admit that, which I shall show is directly contrary to the fact, merely for the sake of putting the case in point of argument in the manner I am about to do. Supposing, then, that your Lordships should be of opinion that fifty lacs was too large a sum, in the case of a man who was liable to a forfeiture of his zamindary, and from whom it ought to have been taken at that time, if Mr. Hastings had fully known all that he afterwards discovered; still I state distinctly and specifically this proposition—that a crime is an intention carried into effect; and, therefore, unless your Lordships can find upon the face of this Charge, and warranted by the course of the evidence, some fact done by Mr. Hastings

which must necessarily be referred to this specific intent, so as in construction of law and reason to be an execution of it, it signifies nothing whether Mr. Hastings intended to inflict upon him a fine of fifty or five hundred lacs of rupees, or a sum to any extent whatever; because I state it in this way —supposing, when he got to Benares, meaning to inflict upon him a fine of fifty lacs, he had neither charged him as he did nor put him under arrest, could it then have been argued on the part of the Commons of England that a mere intention, expressed in a conversation with Mr. Wheler, and nothing done in prosecution of that intention, constituted a crime in respect of which he could be impeached? 12 June 1792

Therefore, I say, his intention of imposing upon Cheyt Sing a fine of fifty lacs was one of two things—let the honourable Managers point out a third if they can—either it was a fixed intention not to be altered, or a variable intention. If a fixed intention not to be altered, still, I say, they must prove some act done in prosecution of that intent: but, in point of fact, there is no act which can be referred to that intent so as to constitute a crime. But the other part of the alternative involves the true fact in this case, namely, that it was not a fixed but a variable intention: and then, I say, it signifies nothing what the original intention might have been if it be liable to variation; because it is impossible to state any one act done in respect to a variable intention, the variation in which is to be subsequent to the fact.

The intention not carried out.

Mr. Markham has distinctly sworn that, in a conversation he had with Mr. Hastings, Mr. Hastings told him he would talk more with him upon the subject of Cheyt Sing's revenue when they got to Benares; which he did for the purpose of being able to decide, upon accurate information collected from Mr. Markham, whether, considered with reference to the circumstances of Cheyt Sing, fifty lacs would be a fine too large or not. That was the purpose for which Mr. Hastings was to confer with Mr. Markham; and that, of necessity, admits that, if in the course of that conversation Mr. Markham had satisfied him, Mr. Hastings, that the fine was too large, considered in reference to his revenue, then, undoubtedly, Mr. Hastings would not have persisted in fixing such a fine. That proves that the fine was not fixed but variable; and, if Mr. Hastings should afterwards be satisfied, upon the intelligence of Mr. Markham, that it was too large to be imposed, that he would not have carried it into effect.

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Thus, then, it stands each way;—first, supposing it to be fixed; secondly, supposing it to be a variable intent.

I now come to the second ground, which is this;—namely, the allegation of those facts which are stated to be done in execution of this criminal motive. And the first that your Lordships will find is this—and upon which I shall say but one word—

"That he did wickedly and maliciously undertake a journey to the province of Benares."

That is an allegation of fact. Whether the journey was undertaken from wicked or malicious motives must appear from what he did when there; and therefore this, though a distinct allegation of fact, seems in effect to be introductory to those which follow.

Paper of accusations delivered to Cheyt Sing.

The next allegation which occurs is—

"That he delivered to Rajah Cheit Sing a paper in writing, in which he falsely accused him of mis-government, and of disaffection and breach of faith and duty to the East India Company, and of other crimes and offences; which said pretended offences were set forth in a certain paper writing, delivered, or ordered to be delivered, to the said Rajah by the said Warren Hastings."

Issue joined on the truth of the accusations.

So that your Lordships perceive that the issue there, as between ourselves and the honourable Manager, is this—that the accusation delivered by Mr. Hastings to Cheyt Sing, such as it was under all its circumstances, was a false accusation. The falsehood of this accusation is, therefore, the issue between us. If I show that in every respect this allegation is true, then, most undoubtedly, there is a complete end of that in which the criminality of this act is stated to consist, namely, the delivering him an accusation which he knew to be false.

A reasonable ground for belief in the accusation sufficient justification of Mr. Hastings.

But I might state—and many of your Lordships will at once know how well warranted the doctrine is—that it is not even incumbent upon me, unless I choose to take that burden upon myself, to maintain the truth of this accusation. It is enough that, at that moment, Mr. Hastings had a reasonable and probable cause to believe that with which he charged Cheyt Sing; and, if he had a reasonable and probable cause to believe that with which he charged Cheyt Sing, he can neither be civilly nor criminally answerable in respect to that accusation—even though it should, in every passage and in every line, turn out to be totally unfounded and totally

untrue. For your Lordships know that the doctrine of the law of England with respect to transactions of this sort is, that malice and want of reasonable and probable cause must both concur. Neither will do separately. Nay, if the charge be ever so unreasonable or improbable, yet, if from the improbability you cannot necessarily infer malice in the mind of the man who made it—no matter how improbable it is—under such circumstances he can neither be civilly nor criminally answerable for his conduct. Therefore, I say that the utmost extent to which the argument would require me to go is this—that Mr. Hastings had, at the moment of making this charge, reasonable and probable cause to believe that every material fact which he asserted in it was strictly and absolutely true. What that reasonable and probable cause was, I shall hereafter have occasion to examine. 12 JUNE 1792.

But here, again, I do not desire to avail myself of that doctrine; because I undertake to satisfy your Lordships, for the honour of Mr. Hastings and for the sake of the fame and character of this country, materially concerned in his conduct, upon this occasion, that the allegations in this charge are in every respect proved, without the slightest variation whatever. What is it, then, in this charge, that Mr. Hastings does, in point of fact, impute to Cheyt Sing? The first allegation against him is this—that, though required, in the year 1780, to pay a sum of five lacs of rupees which he had engaged to pay immediately, yet that he put off the payment of this sum from time to time, and thereby reduced the detachment under Major Camac to very great and considerable distress.

Charge against Cheyt Sing of delay in payment of the subsidy of 1780.

With respect to this fact, therefore, what is it?—that, in the year 1780, a requisition was made by the Board upon Cheyt Sing for the sum of five lacs of rupees, with which he ostensibly complied; but that, notwithstanding such compliance, he delayed the payment, and thereby—which is stated as a circumstance resulting from that fact—reduced the detachment under Major Camac to very considerable distress. Is this, then, true or false?—the issue being upon the truth or falsehood of this charge, that in the year 1780 this demand was made upon him, and eluded upon his part? Why, it happens, singularly enough, that this very fact, which is asserted by Mr. Hastings, of the demand in the year 1780, and the delay that took place in order to defeat the demand, happened in the course of that very year when Mr. Francis, in concurrence with Mr. Hast-

12 JUNE 1792. ings, agreed to inflict a fine of 12,000*l.* upon Raja Cheyt Sing, for that very delay with which Mr. Hastings charges him in this letter. And yet now we are to be told that Mr. Hastings has charged Cheyt Sing with that which he knew to be false, because he has charged him with it upon the ground of these two resolutions, to which I will beg leave to refer your Lordships!

Resolutions of the Board, 21 Aug. 1780.

The first is that which will be found in the 93d page of the printed Evidence, and which was upon the 21st of August, in the year 1780—the very period in question. And here I beg of your Lordships to observe that the charge against Mr. Hastings is, that the accusation of delay in the payment of the war subsidy in the year 1780 was false, and false within his, Mr. Hastings', knowledge. Now, my Lords, in opposition to that assertion in the Charge, I oppose this fact, from the evidence that is in the page to which I have referred your Lordships;—at the very period in question, and applied to the very fact in question, the Board came distinctly to this resolution:—

"Ordered—That Mr. Fowke do inform the Rajah that the Board are much displeased with these affected delays, knowing his ability to make immediate payment of the subsidy, and that he peremptorily require him to discharge it."

What, then!—are we now to be told that, when the Board unanimously, in the year 1780, convicted the man of an affected delay in the payment of his subsidy, it is false? What Mr. Hastings, in the year 1781, merely stated to him as a truth, is that which is to be found in the resolution of the Board. But it does not stop even here, for your Lordships will find that, in the very next page—the 95th page of the printed Evidence—the Board also came to a resolution to exact from him the further sum of one lac of rupees, as a fine for his past disobedience; so that, with respect to the false accusation of Cheyt Sing, what does it turn out to be? That merely Mr. Hastings asserted, in the body of this accusation, that which the Board had determined to be true in the year 1780, and upon the ground of which truth they did come to the resolution at that time to impose upon him a fine of one lac of rupees. Good God! my Lords, what is the pretence to say that this part of the accusation preferred by Mr. Hastings against Cheyt Sing is false? It is true—it is strictly true! and, for the truth of it, I only beg leave to refer your Lordships to the two resolutions of the Board I

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have now pointed out; in the first of which they say they were convinced of his affected delay, they censure him upon the ground of his delay, and determine to inflict upon him a fine of a lac of rupees. Is that true or false, then, which Mr. Hastings states in the year 1781—that this man, though he promised to pay this sum, had delayed it, though it was in his power to have avoided that delay? He then states, as a consequence of this delay, that the army was reduced to the last state of distress; many hundreds deserted; and, had an enemy at that time appeared against them, their total destruction had been inevitable.

Distress of the army occasioned by delay of Cheyt Sing.

"In all this time daily application was made to you by the Resident, and I wrote repeated letters to you, but you paid no regard to either!"

Your Lordships, therefore, perceive that the consequence which Mr. Hastings imputes to this fact was the distress which happened to the detachment under Major Camac. And your Lordships will find it distinctly proved in evidence that, even in the very moment when this demand was first made upon Raja Cheyt Sing by Mr. Fowke, Mr. Fowke writes a letter to the Board, in which he states that he had informed the Raja that the early demand had the appearance of an appointment to a particular purpose. That particular purpose Mr. Fowkes was afterwards informed was the remittance of this sum to the detachment under Major Camac, which resolution immediately follows that which I last read to your Lordships. So that I ask again, are these facts true or false? Is it true or false that Mr. Fowke was ordered to remit this money to Major Camac? The resolution of the Board proves it to be true. Is it true or false that, for the want of this money, many hundreds of the army under the command of that gentleman deserted, and that they were in the utmost distress? Here I only need refer your Lordships to the evidence of all these letters contained as enclosures in the letter of Major Camac, to which, your Lordships recollect, the honourable gentleman objected, upon the ground that there was no person present at the time Major Camac wrote that letter, to prove it was written upon the day upon which it bears date. In that letter is disclosed in the fullest manner the distress of the army. And, therefore, these two facts are established beyond all doubt—namely, that the money was ordered to be applied to the use of the detachment; and that that detachment was reduced to a state of the greatest distress.

Evidence of Major Camac.

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But was this in any respect owing to the conduct of Cheyt Sing? I say it was—for this plain reason—that, if Cheyt Sing had paid that money into the hands of Mr. Fowke at the time when it was first demanded, Mr. Fowke must have remitted it to Calcutta upon the instant; they then would have sent it to Major Camac at Malwa, where he then was, and no delay could possibly have occurred. But he did directly the reverse: he withheld it upwards of three months, instead of making that immediate payment which it was his duty to make. To that circumstance alone it was owing that the great distress to the detachment under Major Camac occurred; which, I say, would have been avoided, if the payment had been made in the first instance to Mr. Fowke, to enable him to transmit it to the Government of Bengal, then in Calcutta.

But again, I am extremely willing to give up this in point of argument to the Manager; because—what is it? Did Mr. Hastings mean to accuse Cheyt Sing merely upon this ground—that a consequent distress had happened from the nonpayment of the detachment under Major Camac? No: he states these two facts, the refusal to pay the money and to supply the cavalry, as distinct, substantive, charges, amounting in themselves to evidence of disaffection and of disloyalty to the British Government. Mr. Hastings did not mean to say that Mr. Fowke had been ordered specifically to explain to Cheyt Sing that this money was to have been transmitted to Major Camac. That he has nowhere said in this charge; but he says—"You were ordered to pay a sum of money, which you promised to pay and did not, whereby a consequence followed":—which consequence he points out to him, to show the effect of his disobedience to the orders of Government. It is not, therefore, stated either as entering into the constitution of the specific fact, which makes the second article in the charge against Cheyt Sing, neither is it alleged as one of these consequences without which the charge cannot be supported; but it is merely put as an instance to show what, in point of effect, had been the mischief attending his not complying with the demand when it was made. Therefore, whichever way this fact should turn, it would leave the original and substantial fact just the same. Thus far, then, as to the fact of his not having paid when he ought the war subsidy of 1780.

Not a specific charge against Cheyt Sing.

I now come to the second, which is this:— 12 JUNE 1792

Refusal of Cheyt Sing to furnish cavalry.

"Besides this, I required in the name of the Governor General and Council, by letter, and ordered Mr. Fowke to repeat the requisition in person, that you should furnish a body of horse to assist and act with the armies of the Company; and, when Mr. Markham succeeded Mr. Fowke, I gave him an order to repeat the demand, which he did accordingly, with frequent and almost daily importunity, limiting the number to 1,500 and afterwards to 1,000. To this demand you returned evasive answers; nor to this hour have you contributed a single horseman."

Testimony of Mr. Markham.

Here, is the second fact asserted in this charge true or false—now that your Lordships have heard the testimony of Mr. Markham? Has he not distinctly told you that, though, week after week and day after day, he used not merely all the authority of his office but all the solicitation of a friend, anxious to save this man from the displeasure of the superior Government, telling him at the same time that, if he did not comply with the requisition, displeasure would fall with dreadful effects upon his head, yet, from the hour of his arrival at Benares down to the moment when he met Mr. Hastings at Bhagulpore, he never had obtained from him a single horse? I leave your Lordships to choose between the Charge, which states that assertion to be false, and the evidence of Mr. Markham, which proves the assertion to be true. Having reduced it to that point, there I leave also the second fact stated in the charge. These are the two distinct facts which Mr. Hastings imputes to Cheyt Sing.

Beyond this, he states—

Seditious conduct, and neglect of the police.

"I pass over other instances of your conduct, in which, through the means of your secret agents, you have endeavoured to excite disorders in the Government on which you depend, and your neglect of the duty which you owe to it and to the subjects of this zemindary, by suffering the daily perpetration of robberies and murders, even in the streets of the city of Benares itself."

This is what the Charge says is false. Mr. Markham tells you that the door of his house was choked up with dead bodies, which were laid there, time after time, by the friends of the deceased, merely because they could not obtain justice from the Raja himself. And yet, notwithstanding this fact, that the police of Benares was, in fact, in such a state that the whole city of Benares might be considered as a den of banditti and nothing more—in opposition to all the evidence of every person who had ever travelled in that country and

12 JUNE 1792. has since come forward as a witness before your Lordships, the Charge takes upon it to impute falsehood to Mr. Hastings in respect to this allegation!

But here I beg to call to your Lordships' recollection this material fact—that, towards the close of the year 1780, long before Mr. Hastings had formed a resolution of imposing a fine upon Cheyt Sing, which is one of the circumstances alleged to be criminal in this Charge—it is now in evidence upon your Lordships' Minutes—he, by order of the Council, had written a letter to Cheyt Sing, reproaching him with the bad state of the police of Benares, upon the representation of Major Eaton, and that he would have the displeasure of the British Government against him if [it were] not remedied in future. This happened in the close of the year 1780; and yet, in 1781, we find that this assertion is a fiction—a falsehood—and nothing more!

Letter of Mr. Hastings on the state of the police.

I believe that I have now gone through every thing in this paper which contains, upon the part of Mr. Hastings, the charge against Cheyt Sing. Your Lordships will now judge whether that charge be true or false. The truth of it I contend is established beyond all question and, I own, I shall listen with extreme anxiety to hear, when the proper opportunity occurs, upon what ground it will be possible for the honourable Managers, with all their plausibility, even to command attention for a single moment, to maintain against the host of witnesses we have called—every one separately establishing the fact—that the city and zamindary of Benares were not at that time in such a state, in respect to the English, that, in the emphatic language of Major Eaton—"there was no safety for the traveller either by land or water," and that he was in constant danger, himself, of being spit at and insulted at the very gate of his fort. This was the language of Major Eaton, a year before Mr. Hastings introduced this fact in his charge against Cheyt Sing.

Representation of Major Eaton on the subject.

The next paper I come to is the answer of Cheyt Sing with respect to this accusation. I need hardly state that the answer must either be one of two things: it must be a denial of the facts or an admission of them; or an admission of the facts, as a third thing, with some attempt to avoid and to justify. One of these things it must undoubtedly be. Now, if it were the first—a denial of the facts—it is not necessary to argue that if the charge be true the denial must be false; and therefore I shall not trouble

Answer of Cheyt Sing to the accusation.

your Lordships with any observations upon that head. It is a denial of the fact that is the nature of this answer. In every instance, he asserts directly the reverse of that of which Mr. Hastings had accused him. With respect to the delay of the war subsidy in 1780, he states— 12 JUNE 1792.

"In this manner I complied, with the utmost readiness, [with the order you sent me for the payment of five lacks of rupees, on account of] the expenses of the war."*

What that utmost readiness was, your Lordships have seen in the resolution of the Board who convict him of affected delays. And for this "utmost readiness and compliance with the wishes of the Board," Mr. Francis is one of the persons who, in the year 1780, would have imposed a fine upon him of one lac of rupees!

Falsehood of his denial.

Is it not, then, a gross and daring falsehood upon the part of this man to say, in opposition to the fact as it stands upon all the proceedings of Government, as evinced upon the consultations of that period, that in the year 1780 he had complied with those demands with the utmost readiness? He had done no such thing!

The other denial upon this part is this—that he was always ready to furnish a certain number of horse, and wanted to know of Mr. Markham where they were to go. Now here I will again put it upon this issue:—Cheyt Sing and Mr. Markham contradict each other flatly. Mr. Markham, upon his oath, has sworn directly the reverse of that which this man asserts in his answer to Mr. Hastings. My Lords, choose between the two which you will believe—and more I will not say upon that subject. But this I will say, that, unless your Lordships have seen anything in the conduct and character of Mr. Markham to make you think that he is a person to whose assertions you ought not to give, as I know you will, the fullest and most complete acquiescence, nothing can follow more clearly and more plainly than that every part of the charge by Mr. Hastings is true, and every assertion on the part of Cheyt Sing is consequently false.

The arrest of the Raja.

The Charge then states, as the next measure in respect of which Mr. Hastings is asserted to be criminal—that he ordered the Raja to be put under an arrest in his own palace,

* Letter of Cheyt Sing to Mr. Hastings.—Printed in the "Narrative of the Insurrection," p. 17.

12 June 1792. and loaded him with unmerited indignities. Before, however, I go into the circumstances of the arrest, I would beg leave just to remind your Lordships of this—that, if I have maintained successfully that the first overt act charged to be a prosecution of this specific intent is absolutely without foundation, namely, that Mr. Hastings delivered to Cheyt Sing a charge which was false—if your Lordships are satisfied that that falls to the ground, because the charge is proved to be true—then we get rid of one of these overt acts which are stated as proofs of the specific intent, even if I was to admit the specific intent to be criminal to the greatest degree.

I now come to the second act, the putting the Raja under an arrest, whereby, it is stated, he was "loaded with unmerited indignities, which measure did cause great alarm amongst his subjects." Loaded with unmerited indignities undoubtedly he was, if any part of this Charge be true. If Mr. Hastings in not one of these years had a right to call upon him to pay the sum of five lacs of rupees—if all that followed his refusal was oppression and nothing else—he was loaded with unmerited indignities, because it was the arrest of an innocent man. These gentlemen, therefore, are consistent with themselves, and their Charge is consistent with itself in every part, when they state, upon the ground of his being an innocent man, that the arrest was an arbitrary and tyrannical measure, and that he was loaded with unmerited indignities. But it will be a little more difficult to account for the consistency of those who, admitting this man to be criminal, yet maintain that the merely putting him under arrest—under all the circumstances that I shall point out—constituted an arbitrary or tyrannical act; or that it could be said to be an indignity that was unmerited. I beg, therefore, to say that I concede to the honourable Managers—let us distinctly and fairly understand each other—if they have succeeded in establishing the former part of the Charge, that we had no right to make the demand, I admit we had no right to put him under an arrest. But, then, let them with the same spirit of fairness concede to me that, if we had a right to make the demand, we had a right to put him under an arrest; because it goes upon the ground and belief of his being altogether innocent, to whom it was an indignity, not only to put him under an arrest, but to do any thing in the shape and form of punishment.

The right to make the arrest.

The Charge, therefore, is not in this shape—that the arrest, considered by itself or with reference to the conduct of Cheyt Sing if criminal, was in part improper, but it proceeds entirely upon an idea that Cheyt Sing's conduct was innocent. If your Lordships think he was not so, but was liable to the subsidy every one of those years, and that Mr. Hastings was bound to take some measure to enforce the demand, then, whatever might be your opinion, even with respect to the specific subject of the arrest—that you thought it disgraceful—an idea I shall show to be ridiculous in the extreme—still I say the present Charge is not shaped to such a question. The Charge assumes Cheyt Sing's innocence.

But was the arrest of Cheyt Sing, under all the circumstances of the case, a measure tyrannical and arbitrary?—What is the evidence that your Lordships have heard from Mr. Markham upon this subject? He had been some time resident in the city of Benares previous to his appointment as Resident. He had been there with Mr. Graham. He knew the temper and disposition of this man; and Mr. Markham has told you that, in the conversation with Mr. Hastings at Bhagulpore and afterwards at Benares, he, Mr. Markham, told Mr. Hastings distinctly, as his opinion and advice, that it was necessary to secure the person of the Raja, in order to prevent his flying to his forts, which he thought he would otherwise have done [preparatory] to breaking out in rebellion against the English. Good God! my Lords, if the conduct of this man was such as to demand some punishment—and that must be admitted by those who admit the existence of the right—was Mr. Hastings, in the city of Cheyt Sing, sursounded by all his forces, to the number of many thousands as it afterwards appears, without any force to guard or protect his own person, to leave this man at large, to break forth in rebellion to the measures of the Government, without restraining his person? I say the arrest of Cheyt Sing was a measure necessary, so long as it is established that Cheyt Sing was liable to punishment of some sort; and, further, that it was not merely the original idea of Mr. Hastings, but that it was done upon the advice of Mr. Markham, who told him that it was necessary for the public safety. But here I beg to recur to what I before pointed out as happening when they were at Buxar. If I have succeeded in establishing that there was a probability, if Mr. Hastings had attempted to arrest Cheyt Sing, that all this force that had been assembled would have resisted for his defence, I ask, Mr. Markham advises the arrest. Necessity of the measure.

12 JUNE 1792. if he was not unexpectedly put under an arrest, whether there was not the same probability in the city of Benares, when the same force was stationed round Sivalaya, to the number of 4,000 men, armed and prepared for action? or whether your Lordships think this force, previously and secretly assembled, would not have been ready and under command at the inclination of Cheyt Sing—would [not] have assisted him, in any measure to which he might have had recourse to oppose the demands of the British Government? I say, therefore, in every light the arrest of Cheyt Sing was necessary, as a measure of prevention and precaution.

But I go further, and say that the honourable Managers must maintain this—that, supposing the arrest of Cheyt Sing to be the ultimate measure intended of punishment and nothing beyond it, then, in that case, as a measure arbitrary and tyrannical, it constitutes a substantive offence, and that it is not merely so in respect of the intention, which they allege was to follow, to extort from him a large sum of money, because that intent might be renounced, as I stated before: and, further, I state this—if, under all the circumstances of the case, your Lordships are clearly and decidedly of opinion that it was not a measure too harsh and severe, merely to place a guard over this man, who had been for years secretly collecting his forces with a view to break out into rebellion against the English Government and to pour down in a torrent destruction upon us—if your Lordships think it not a measure too severe to put a guard over such a man as this—then I stand upon the ground that the arrest, such as it was, is in itself a measure strictly justifiable and legal; and then I argue that, if so, an act that is legal in itself cannot become illegal with respect to any intent with which it may be accompanied, even if your Lordships should be of opinion that the intent would have been illegal if accompanied with a particular fact.

Legality of the act not vitiated by the intent.

In an assault with an intent to commit murder the intent is matter of aggravation; the substantive fact consists of the assault. But, if the act done does not in point of law amount to an assault but could be justified, it is impossible that it can become criminal, even with the intent to murder with which it may be accompanied: or, in other words, an act legal in itself can never become illegal in respect of any intent with which it may be accompanied. And, therefore, supposing the arrest to be by way of precaution or pre-

paratory to punishment, or supposing it to be the ultimate punishment intended, if your Lordships think it to be fairly justified, even if you could get the length of believing that Mr. Hastings meant to extort this money from him, still the act would not amount to that specific offence. Then I shall show that, in all the acts—the delivery of the accusation, the putting him under an arrest, with the acts stated in the prosecution of that intent—they fall to the ground, and cannot be coupled with any such intent. 12 June 1792

I have now examined the conduct of Mr. Hastings with reference to the Charge, in the manner in which it is framed. I again recur to the great and fundamental proposition in this case—the charge of malice, in consequence of a conversation that took place between Mr. Markham and Mr. Hastings. Mr. Markham has told your Lordships that he was accordingly to proceed to the palace of the Raja, and to put him under an arrest; that he had the particular directions of Mr. Hastings to treat him with all possible lenity and tenderness upon the occasion, consistent with the safety of his person. This is the proof of malice as to the manner of doing the thing! Mr. Markham did put him under an arrest: two companies of sepoys followed, who were afterwards stationed around his palace. The Charge states, that, shortly after that, the populace, incensed by the indignities offered to their prince, rose up and assassinated part of the guard:—and this brings me to consider the circumstances of that dreadful transaction, the massacre at Sivalaya Ghat.

Mr. Hastings directs that Cheyt Sing be treated with lenity.

There are two circumstances, to one or other of which—and to which your Lordships will decide—this must be imputed. The honourable Managers say that it was to the conduct of the chobdar of Mr. Markham, who, upon being sent with a message from Mr. Hastings, delivered it in an insolent and disrespectful manner. We impute it to another cause, which I will presently state; and then I will leave it to your Lordships to decide between the two.

Particulars of the massacre at the Sivalaya Ghat.

Shortly after the Raja was put under an arrest, intelligence came from Lieutenant Stalker, one of the unfortunate officers who were with these troops, that they had no ammunition, and that large bodies of armed men were crossing the river from Ramnugur—part of that very body of men who had been stationed there on their return from Buxar with Cheyt Sing, when he went to meet Mr. Hastings — and that he, Lieutenant Stalker, requested that ammunition might be immediately sent to them. Upon

12 JUNE 1792. this, two messages appear to have been despatched; the one by a chobdar, who was directed to inform Cheyt Sing that, if anything happened to the English forces, he should answer for it; the other was despatched to a person whose evidence I must now point out to your Lordships' attention.

It appears that, immediately upon the intelligence being received by Colonel Popham that the troops were without any ammunition, orders were sent to Lieutenant Birrell, who has been examined, to proceed with the company under his command, with ammunition, to reinforce the two companies of sepoys who were in the Raja's palace. Lieutenant Birrell has distinctly stated that, upon his coming within two hundred yards of the palace, where the Raja together with the other companies then were, he was opposed. By whom was he opposed? By the populace of Benares? No! Two thousand men, drawn up in military array against him, opposed his passage! What was his conduct upon that? He, with sixty or seventy men under his command, halted, and sent to Colonel Popham, his commanding officer, stating what his situation was, and desiring to know whether he should proceed at all events. The answer was, that he was to force his way. He immediately attempted to execute his orders. He had scarcely advanced five paces when he received the fire of the enemy, and almost every man, with the exception of a very few, of the small corps under his command fell dead or wounded at his feet. As soon as he could rally the few remaining men, he advanced to the palace; and what he discovered when he came there he has himself told you. He discovered upon his entrance to the palace the gateway choked up with the bodies of dead and dying sepoys; and, advancing a little further, he found the bodies of Lieutenants Stalker, Scott and Symes, lying near each other, shockingly mangled and without signs of life.

But, my Lords, during this scene, what became of the Raja himself?—for to him let our anxiety turn, our pity tend. Compared with this suffering Raja how vile a thing is all the British blood that could be shed! Tell us not of the bodies of Lieutenants Stalker, Scott and Symes, lying near each other, shockingly mangled and without signs of life. There let them lie, cut and hacked by the scimitars of Munnear Sing and Sineo Sing, and a thousand other heroes, though nameless not to be forgotten, each of whom distinguished himself by his zeal upon this glorious occasion! What

becomes of this unfortunate Raja? He fled, says the Charge, for safety to a fort in the neighbourhood. What happened next? He sent immediately, says the Charge, submissive letters to Mr. Hastings, begging that he might be received into favour again. And here I take for granted that the charges allude to that fact which was proved in evidence by Colonel Gardiner; and I admit that Colonel Gardiner distinctly stated that, undoubtedly, the second day after the massacre—whether it was meant as an artifice or whether not is immaterial—but that application was made to him by a person of the name of Govind Ram, desiring that he would interpose with Mr. Hastings and mention him favourably to him. Colonel Gardiner has distinctly told your Lordships this—that he communicated that information to Mr. Markham. And what was Mr. Markham's answer? "How can you intercede for the murderer of your friend?" Whether, therefore, it would have been the duty of Mr. Hastings to attend to this information or not, is a question that cannot arise—not that I mean to shrink from it—because the information was stopped in its progress to him from Mr. Markham, who refused to communicate it to Mr. Hastings. Not that I mean to distinguish as between Mr. Hastings and Mr. Markham in this transaction. Mr. Markham has justified his conduct upon this occasion at your bar. He has no recollection of the particular answer Colonel Gardiner states, but he believes it to be true, because under the same circumstances he would give the same answer now—"How can you intercede for the murderer of your friend?" My Lords, it was the language of a warm heart glowing with genuine affection and full of manly regret; for to him, too, as well as to Colonel Gardiner, Lieutenant Stalker had been a friend. He had seen him, as he thought, basely murdered, inhumanly butchered, by a set of dastardly men, deriving a false courage from their numbers and concealment, and only daring to attack those whom they knew to be comparatively unarmed. Was he, when his miserable remains were committed to the earth, to lose the sense of his wrongs, and, as the last tribute to his memory, to assist towards the triumphant return of his destroyer to that spot? No! no! call it the act of Mr. Hastings—call it the act of Mr. Markham;—it was not on the second day after the massacre, with an hundred men dead upon the spot, and three British officers murdered, cut and mangled, that an easy restoration of Cheyt Sing was to be made!

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The Raja escapes.

He sends letters of submission to Mr. Hastings.

Mr. Markham refuses to forward the communication to Mr. Hastings.

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Attack on the boats by Sujan Sing.

But, at the moment of his writing these submissive letters, to which Mr. Hastings ought, it seems, in the construction of this Charge, to have paid so much attention, what were the other scenes that were going on all around them? On the fourth day after the massacre at Benares, two boats came down the river, opposite the fort of Ramnugur, containing the men who had been wounded there during the action of the morning. Who commanded in that fort? Sujan Sing, the brother of Cheyt Sing. What was the conduct of those under his command? My Lords, turn to the evidence of Colonel Gardiner. The moment these boats came opposite the fort, men put off from the shore with their drawn sabres. The moment they boarded these boats, instantly the work of death began. The wounded men fled for mercy to the waves. Colonel Gardiner has told you that, of those who jumped overboard, several were drowned, and he had the happiness to save some in the other boat, in which Mr. Hooper, an itinerant merchant or pedler, or a man not following the profession of arms, was. He was cut down before the eyes of Colonel Gardiner. This was the manner in which Sujan Sing, at the head of forces of Cheyt Sing, was conducting himself, at the very time that these letters were being written from day to day, to Mr. Hastings!

Cheyt Sing orders his zamindars to destroy the English.

But it does not rest here. In what manner was Cheyt Sing conducting himself upon the occasion? And here it is only necessary to refer your Lordships to all those mandates, which are to be found in every part of this evidence, directed to all the different zamindars and chiefs in every part of the country:—"wherever you meet with the English, plunder and kill them: consider this as particularly enjoined. But do not stop even here. Death is the limit of a brave man's enormity; cowards should do more. Let cruelty supply the place of courage. Torture the dying; insult the dead; sever from the mangled bodies of British officers their heads, and carry them through the air upon spears." This was the employment of the army of Cheyt Sing, and of the person most nearly related to him, at the very moment Mr. Hastings is accused for not paying attention to his letters, and impeached for not showing mercy to him, while he was shedding those tender mercies upon our unfortunate fellow subjects!

Cause of the massacre at Sivalaya.

I have now, therefore, gone through an examination of all the circumstances which attended the massacre at Sivalaya; and, I say, it most clearly results from the evidence of Lieutenant Birrell that it was occasioned, not by any thing

that happened within the palace, but by an attempt made by him, under the orders of his commanding officer, to do that which he arrived, unfortunately, too late to perform—to reinforce these unfortunate gentlemen with ammunition, to enable them to withstand the attack. The firing took place when no firing had been heard from within; and, therefore, it is utterly impossible to impute to the conduct of the chobdar that which the Charge seems to impute, because it states that the populace were incensed—that they were excited to rise—by the march of a reinforcement sent under a British officer, and by the indignities offered to their prince. 12 JUNE 1792.

Now, if by that, is meant any thing that passed by the chobdar, I say, it is too ridiculous to suppose that, precisely at the same moment of time that the chobdar was insulting the Raja within, Lieutenant Birrell should be attempting to force his way without—that, while there was no communication between those within and those without, the same cause should operate at precisely the same moment. And it is impossible to suppose that the chobdar of Mr. Markham, a person who was in the habit of being the bearer of all messages and the medium of all intercourse between Mr. Hastings and him, should have gone for the mere purpose of insulting the Raja, at the moment when he was surrounded by his friends and armed men, with whom the court was filled. Not only the fact, as proved by Lieutenant Birrell, but the probability of the case is, that, the moment he attempted to advance with his party, he was fired upon. And the firing without was the signal for the attack within. That moment, these persons and the officers were instantly sprung upon [by] these men with their drawn scimitars. I impute to that fact alone—the resistance given to Lieutenant Birrell in attempting to march to reinforce the sepoys—all that bloody and horrible scene that followed.

Rebellion of Cheyt Sing.

I shall not conduct your Lordships, after this, through all the different engagements that took place in the various parts of the country, and all the numerous cruelties that were practised. The forts of Pateeta, Lutteepoor and Bidjey Ghur, were for months together defended by the troops of this man against the British arms—defended in the course of time unsuccessfully, because the British arms every where prevailed. And yet the Charge goes the length of stating that, after all this blood had been shed—after this man, at the head of his armies, and pouring down his artillery from his forts upon us, and strewing the place with the dead bodies of British subjects, had been six weeks employed in

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A sufficient reason for depriving him of his possessions.

this way—the Charge lays it down as a proposition, in the highest Court in the country, that this man was unjustly expelled from the possessions he held! Will your Lordships say that, a man conducting himself in this way, not only with rebellion, but continual war against the troops of his British Majesty, it was unjust to expel such a man from the possessions he held? The mischief would be dreadful if this doctrine could go forth as the language of this country to those who are dependent upon us in India; but I trust that the justice of your Lordships will, in the event of this cause, be an antidote to the poison of the Charge.

I now come to consider the transactions that followed. I feel I am trespassing much longer than I wished to do upon your Lordships' attention. The importance of the case must be my justification; and I shall endeavour to comprise in as few words as I possibly can all that remains upon the subject.

Charge against Mr. Hastings respecting the attack on Bidjey Ghur.

The next charge is—that, after this, Mr. Hastings directed an attack to be made upon the fort of Bidjey Ghur, which the Charge describes to be the residence of Panna, the mother of the said Raja, and of the surviving women of the family of Raja Bulwant Sing. Your Lordships have heard of that fort. Next to the impregnable—as it was called, till Colonel Popham took it—fortress of Gwalior, I believe it to be the strongest of any in India. It is a fort, as it has been described by Colonel Gardiner, situate upon a rock at the height of 745 feet. This, half way between the earth and the clouds, was the residence of the gentle Panna. How did she employ herself when there? Hear it again from Colonel Gardiner:—she was the person who gave all the orders to the bukhshi. Hear it again from Colonel Popham:—she was the person with whom he capitulated. In fact, she had the command of that fort which, day after day, poured down its fire upon the British forces, occasionally killing and wounding many of our men: and yet Panna, in this very occupation, has been very aptly compared by the honourable Manager who summed up this part of the Charge to the wife and mother of Darius in the tent of Alexander! No man can have a higher opinion of the gallantry of the gentleman than I have. I have no doubt that, of all Homer's heroes, he would last have chosen the character of Diomed; and, at the fall of Palmyra, he, doubtless, would have wept in the train of Zenobia.

Panna, the Raja's mother, in command.

It seems to me that it is pushing gallantry a little too far, to maintain that, if a woman throws herself into the strongest fort in the country, from that instant it becomes her residence, and an offence in a British commander, though his

men are being daily killed under his eyes, to point his guns against it. 12 JUNE 1792.

Seizure of the treasure contained in the fortress.

But it is said that he ordered the troops to seize upon their money and effects, without even pretending that they had committed any offence whatsoever, and without even inquiring whether the treasure contained in the fortress of Bidjey Ghur was the property of the said women or of Cheyt Sing. To seize upon their money and effects! How do the prosecutors know it was their money and effects? What evidence have they given of that? They seem to know a great deal more than Panna herself did, to whom this money and to whom these effects belonged; for she never asserted that which, in her behalf, the honourable Managers have set up as a claim. It was never represented, either to Colonel Popham or Mr. Hastings, that the money and effects in that fort belonged to her. But, with all due respect to the honourable Manager—whom I wish to treat in every part of the observations I make with the greatest respect—that idea is totally unwarranted—I had almost said, frivolous and futile; because we all know that the fort of Bidjey Ghur was that in which Cheyt Sing always kept his treasure. It was that to which he had himself retired, and had evacuated, with the greatest part of his treasure, but two or three days before. He would have carried this with him, but, upon the appearance of our troops, a panic seized him, and that was the only reason why this treasure was left behind. It is totally contrary to the fact, and there is no evidence that this money or these effects belonged to them. But I will admit here that every bit of property, of every sort, belonged to Panna and the surviving family and widow of Bulwant Sing. Will it be maintained that, if she, a subject of Cheyt Sing's, and, therefore, depending through him upon us, would maintain the strongest fort of his country for six weeks together when besieged by the British army, that did not induce a forfeiture of the effects, whatever they were, that were to be found in that fort? Therefore, it is perfectly immaterial to whom the effects belonged. The consequence must have been, undoubtedly, the same, namely, that the defence of this fort was an act of rebellion upon the part of those who defended it against the British arms—an act of treason, and, as such, inducing a forfeiture of the property contained in it. Thus much, then, with respect to the residence of Panna and the property in this fort.

The question of ownership immaterial.

12 JUNE 1792.

Atrocious orders imputed to Mr. Hastings.

But it is said that Mr. Hastings did stimulate the army to rapine and outrage, by the wicked orders which he issued—by directing that the fort and all the property it contained should be secured for the benefit of the detachment employed in reducing it? My Lords, upon this subject it seems to me that one answer alone would suffice. I need only remind your Lordships who was the officer employed in the siege of Bidjey Ghur—Colonel Popham!—a name which needs only to be mentioned to draw down upon it universal respect!—a man as much distinguished in every private circle that is blessed with the honour of his acquaintance, as he is gloriously so for his public services performed in the field of battle! Think you that Colonel Popham, at the head of his troops, would have been the instrument to carry into effect wicked and atrocious orders, or to do any one injury to the unfortunate persons who by the chance of war might be put into his possession?

His letter to Colonel Popham on the subject of Cheyt Sing's family.

But it does not rest here; for, when the Charge is imputing wicked and atrocious orders to Mr. Hastings, my Lords, do but hear the language which Mr. Hastings himself addresses to Colonel Popham upon this subject. In page 1803 of your Lordships' Minutes, you will find this letter:—

"I am well informed of Cheit Sing's family being left in the fort of Bidjegur. It is unnecessary to recommend to you, what I know your own humanity and generosity will suggest, in the event of their becoming your captives. I, therefore, only desire to intimate a wish that the earliest attention may be paid to them, should the place be surrendered to you, and that you will provide for their protection with a solicitude that may show that their honor and safety are particular objects of our regard; and this you will, I hope, be able to effect by the same means which it is necessary to employ for securing their persons, without any trespass on the respect and decorum due to their rank, and still more to their misfortunes."

This is not a letter upon the records of the Company, but addressed to Colonel Popham as a friend; and this is a sort of letter that reflects the heart and soul of Mr. Hastings, and shows what it really was. He was not at the moment an actor upon the public stage, dealing out to an applauding audience splendid sentiments of sounding morality. These were not speeches delivered to an assembled public, to be afterwards carefully revised and handed down to posterity as immortal monuments of oratorical glory. No! they were the private sentiments of Mr. Hastings, privately communicated to Colonel Popham—

never meant to charm the public ear, to fascinate the public eye; but, on the contrary, to them peculiarly belonged the description— 12 June 1792.

> "Did good by stealth and blushed to find it fame."

These are the private orders Mr. Hastings gave to Colonel Popham;—this the clandestine correspondence for which he is stated to be criminal in this Charge!

Colonel Popham's explanation of the alleged outrage.

My Lords, it is vain and idle to pursue this subject further. Colonel Popham has explained to you to what an accident it was owing that these persons, after the surrender of the fort, were stopped—that the property taken from one of them was immediately returned; and your Lordships have it distinctly in evidence from Mr. Markham, that, having, not long after, met them at Benares, they returned him their sincere and cordial thanks for the generous treatment they had experienced on the part of the British nation. Yet these are the persons whom Mr. Hastings is charged with having stimulated the army under command of Colonel Popham, by his wicked orders, to plunder and to insult! Thus much with respect to the fort of Bidjey Ghur.

Appointment of Mehipnarain to the government of Benares.

The next part of the Charge is that which relates to the appointment of Mehipnarain and of Durbejey Sing to be the administrators of his authority; and it is stated that—

> "Mr. Hastings did, of his own usurped authority, and without any communication with or any approbation given by the other members of the Council, nominate and appoint Rajah Mehipnarain to the government of the province of Benares."

Assent of Mr. Wheler and Mr. Macpherson to the appointment.

Here again, I will only distinctly refer your Lordships to the evidence, from which it plainly appears that Mr. Wheler and Mr. Macpherson both, in the fullest manner, gave their approbation and assent to these particular measures which Mr. Hastings is charged with being criminal in having carried into execution without that approbation. More upon this trifling part of the Charge I will not say; because it seems to me, whichever way the fact is, whether it had or not their approbation, if they mean to say that this appointment of the son upon the [deposition] of the father was not an act of kindness, and the most proper thing that could be done, let them come forward and state that; but do not let them put it upon that trifling circumstance, that it had not the approbation of the other members of the Council. I say it had the approbation of every person upon the Board.

12 JUNE 1792.

Justification of increased tribute on Benares.

In the same manner, with respect to the subsequent part of the Charge, it is stated—

> "That he did arbitrarily and tyrannically, of his mere authority, raise the tribute to the sum of 400,000*l.* sterling, or thereabouts."

Now, this also stands precisely, in that respect, upon the same ground as the former. This measure, whether right or wrong, had the approbation of the other members of the Board. What! is it to be endured that I am to be driven to the necessity of arguing this day at your Lordships' bar that the tribute of forty lacs of rupees, as imposed by Mr. Hastings upon the province of Benares, and which during the last ten years has been collected without intermission by the British Government, is an arbitrary and tyrannical measure, and stands in need of any justification? I rest it again upon that ground—that, notwithstanding the British nation has had full intimitation of all the circumstances attending the imposing that tribute, it has been continued down to the present day; and not merely this, that it is not oppressive, because it is a tribute which the country is well able to pay, having uniformly paid it ever since.

Dismissal and arrest of Durbejey Sing.

There are two other parts of the Charge, upon which I mean to detain your Lordships but a very short time, because they resolve themselves into a very easy answer. It is stated that this man, Durbejey Sing, who was appointed as the administrator of the authority of his infant son, was shortly afterwards removed, under pretence that the new excessive rent or tribute was in arrear, and that the affairs of the province were likely to fall in confusion, and—

> "That the said Durbedgy Sing [was, by the private orders and authorities given by the said Warren Hastings, and in consequence of the representations aforesaid, violently thrown into prison and] cruelly confined therein."

Here, then, are two facts distinctly charged—first, that his confinement was under the pretence of arrears in the tribute; next, that it was violent and cruel. Here I would only beg leave to refer your Lordships to the evidence of Mr. Markham, who has distinctly sworn to the precise sum this man owed at the moment to the British Government, and that the measure of putting him into confinement he suggested. Your Lordships know what the confinement was. Instead of being violent and cruel, your Lordships know, the guard was put outside the wall which encircled the palace in

which he resided: and this is the confinement which the Charge states to be "violent and cruel"—"under a pretence," which is proved not to be true, for it is proved by Mr. Markham that he was in arrears at the time. 12 JUNE 1792

In consequence of the confinement of this man, it became necessary to appoint another. Jugger Deo, therefore, was nominated to succeed him. He conducted himself ill in his office. There are upon your Lordships' Minutes a great number of complaints, distinctly stated, from the different rayats, against him; and, in consequence of these complaints of misconduct, Mr. Hastings removed him, and appointed another person in his place. Whether he ought or ought not to have suffered this man to continue in office, notwithstanding all the complaints against him, I leave to your Lordships to decide; and, if not, whether he ought to be considered as criminal, merely for having removed him. More upon these subordinate and secondary parts of the Article I do not think it necessary to say.

Appointment of Jugger Deo as administrator.

He is dismissed for misconduct.

I have taken the liberty of pointing out, for your Lordships' approbation or condemnation, the great questions for your Lordships to decide. They are these:—

Questions to be decided by the Court.

First, whether, in respect of the several demands in each of these years, they having received at the time successively the approbation of every different member of the Board, and having been uniformly applied to the public service by the approbation of the court of Directors and his Majesty's Ministers, you can at this day say that malice and criminality are to be imputed to Mr. Hastings?

The second point will be, whether, under all the circumstances that I have stated of the murder and massacre of our troops at Benares, of the war carried on in every part of the country against us, under all the circumstances attending it, the expulsion of Cheyt Sing was that which the Charge states—an unjust and tyrannical measure? I can only say, forbid it the honour of Mr. Hastings!—but forbid it still more the fame and glory of this country!

My Lords, we have heard much of British justice; and here, as in her chosen temple, we have been desired to behold her displaying her loveliest form and placed in her most graceful attitude. But to me her form appears more lovely when turning to the injured, her attitude most graceful, not when she rises to strike the oppressor, but when she stoops to raise the oppressed. This British justice,

12 June 1792 — to whom our adoration is due, is, no doubt, a being consistent with herself. To her it can never have been necessary to suggest that the first duty of justice is to redress wrong—that to punish the wrong doer is the secondary only. Suffer me, then, to ask, what is become of this u nfortunate and persecuted man, whom they represent to have been a prince oppressed and plundered? No doubt, long since, British justice has restored to him all those sums which the guilt of an individual extorted from him. No doubt, long since, again he sits upon the throne of his ancestors, and rules his people with recovered sway. Not so, my Lords. He is at this moment, we are told, a vagabond and a wanderer; and the latest accounts that we have of him are, that the British Resident at the court of Madaji Scindia refused to appear there if he was suffered to be present.

Present condition of Cheyt Sing.

My Lords, when I hear this, can I help exclaiming—"Oh! British Justice, thy ways are indeed mysterious and incomprehensible! No doubt, thou art, as thy worshippers represent thee, a being upright and wise; chaste are thy determinations, and virtuous thy decrees; but thy means are impervious and inscrutable. Thy temple is, indeed, encircled with the majesty of darkness. The light shines not upon thine altar. Suffer me, then, to depart, and not seek to explore what I perceive I am not permitted to understand!"

Conclusion.

Thus much, my Lords, with respect to the situation of one of the persons whose treatment is the subject of the present Charge.

But, with respect to Mr. Hastings, once more let me entreat of your Lordships to consider the sort of accusation, and the person against whom it is made. It is a charge of cold, deliberate and contriving, malice. My Lords, there is no such thing as an instance of a man becoming malicious for the first time, who had attained the age of Mr. Hastings at the period of this act being done, and who never had been malicious till that moment of his life. The taint of malice is in the heart; it mixes with the blood, and it pervades the general conduct; it gives a tinge and character, more or less, to every action. Mr. Hastings' character at this time was well known and ascertained. The spring is the season of promise, but in the autumn the tree is known by the fruit it has produced. How he was esteemed by all those who had an opportunity of observing him, my Lords, I will not point

out, that I may not do injustice to the eloquent and forcible manner in which my learned friend who opened the defence has already treated this subject. I will only say, that it is almost an enviable lot to be accused, when the effect of accusation is to gather round him every man of virtue and sensibility who has ever had occasion to know him, either in public or private life, to wash out with their tears the stains which his accusers have cast upon his character. It is a glorious thing to be accused at your Lordships' bar as the oppressor of suffering nations, and, in the very course of the inquiry into that charge, to have those nations pressing forwards to your bar—not to accuse, but to applaud—not to claim his condemnation, but to demand his acquittal! 12 June 1792.

These are, upon occasions of this sort, but matter of fair and honourable mention. But let it not, however, be understood that I mean to call in aid the character of Mr. Hastings, as explaining any part of these transactions, or to suppose that they are of such an equivocal nature as to need such an explanation. That would be a more cruel insult offered him on this side of the Court than—I will not say, has been offered him on the other—but, than any accusation which, however painful to the Managers, they have felt it necessary to bring forward. I state these two grounds for the acquittal of Mr. Hastings—his own conduct, and your honour!

SPEECH OF EDWARD LAW, ESQ., COUNSEL FOR MR. HASTINGS, IN OPENING THE DEFENCE ON THE SECOND ARTICLE OF THE CHARGE, RELATING TO THE BEGUMS; 15 FEBRUARY, 1793.

15 FEB. 1793. AGAIN, my Lords, after a further period of protracted solicitude, the Defendant, Mr. Hastings, presents himself at your Lordships' bar, with a temper undisturbed and a firmness unshaken by the lingering torture of a six years' trial. God forbid, my Lords, that I should be understood, in the mention of this circumstance, to arraign the mercy or the justice of this tribunal! No, my Lords, all forms of justice have been well observed My blame lights on the law, not on your office, which you with truth and mercy minister. As little do I advert to this circumstance as seeking unduly to interest your Lordships' compassion or tenderness on his behalf. No, my Lords, as he has hitherto disdained to avail himself of any covert address to those affections, so, I trust, he does not feel himself more disposed at the present moment than at any former period of his trial, to sully the magnanimity and consistency of his past life by the baseness of the present. He does not, even now, on his own account, condescend to lament the unfortunate peculiarity of his destiny, which has marked him out as the only man, since man's creation, who has existed the object of a trial of such enduring continuance. I trust, my Lords, he has the virtue to lose the sense of his own immediate and peculiar sufferings in the consolatory reflection which his mind presents to him, that, as he is in the history of mankind the first instance of this extraordinary species of infliction, so, unless he vainly dreams of the effect of this instance on the human mind, and has formed a rash and visionary estimate of the generosity and mercy of our nature, it will be the last. He trusts that, with reference to his own countrymen, he may venture to predict what a great Roman historian, contrasting a new and barbarous punishment, in the infancy of the Roman empire, with a subsequent lenity and humanity which obtained amongst his countrymen, ventured to declare—

["Primum ultimumque illud supplicii exemplum, parum memoris legum humanarum, fuit."]*

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* Livius, lib. i., cap. xxviii.

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Dismissing, however, a topic which, in the present advanced stage of this trial, is more material for consideration with a view to the happiness and safety of others than his own, he only wishes it may for the present so far dwell in your Lordships' memory as to exempt him from the blame of impatience if, thus circumstanced, he ventures to expect such a portion of accelerated justice as a due attention to the other great public demands on your Lordships' time may consistently allow.

The present disturbed state of India favourable to a just appreciation of Mr. Hastings' service.

My Lords, he cannot but consider the present moment as on some accounts peculiarly favourable to the consideration and discussion of the many important topics which have presented themselves for your Lordships' judgment in the course of this trial. In a season of re-commencing difficulty and alarm, we learn better how to estimate the exigence of the moment, and the merit of that moment well employed, than in the calmest seasons of [tranquillity]. We then best know how to value the servant and the service. We hear with awakened attention and conciliated favour the account which vigour, activity and zeal, are required to render of their efforts to serve the State, and of their success in saving it. In reviewing a detail which ardent and energetic service is required to lay before us, with a sort of inconsistent gratitude we almost wish to find an opportunity to recompense, in the voluntary exercise of our own virtues, some error which candour might concede, some errors, some excesses, which generosity might be required to palliate. The same motives which at such a season induce us to appreciate thus favourably the situation, duties, difficulties and deserts, of ardent and energetic service, induce us also to contemplate with more lively indignation the open attacks of unprovoked hostility—with more poignant disgust the cold and reluctant requitals of cautious friendship—with still more animated sentiments of detestation and abhorrence, the treacherous attempts of emboldened ingratitude.

These, my Lords, are sentiments which the present moment will naturally produce and quicken in every mind impregnated with a just sense of civil and political duty. Can I doubt their effect and impression here, where we are taught, and not vainly taught, to believe that elevation of sentiment and dignity of situation are equally hereditary, and that your high Court exhibits at once the last and best result of national justice, and the purest image of national honour?

15 FEB. 1793. To you, my Lords, untrammelled by ordinary forms and sanctions, by which in other tribunals the attention is attracted and the conscience bound to the solemn discharge of judicial duties, the people of England, with a generous confidence, equally honourable to themselves and you, have for a long succession of ages intrusted—to your own unfettered and unprompted, because unsuspected, honour—the supreme and ultimate dispensation of British justice. Such, then, being the tribunal, and such the season at which the Defendant is required to answer before you for certain acts of high public concern, done in the discharge of one of the greatest public trusts that, during so long and arduous a period, was ever committed to any one man to execute, he cannot but anticipate with the most sanguine satisfaction that fair, full, liberal, consideration of his difficulties and of his duties, of the means by which those difficulties have been overcome, and of the manner in which those duties have been discharged, which he is sure of receiving at your Lordships' hands.

My Lords, the great length of time which this trial has already occupied, and the further portion which it must yet necessarily consume, would render it unpardonable to waste any part of it upon subjects not immediately connected with the charges which yet remain to be discussed before you. I shall, therefore, without delay, address myself to those topics which are most immediately and intimately connected with the Charge which next falls under your Lordships' consideration—I mean, that which is contained in the second Article of impeachment, and respects principally the supposed injuries of the mother and grandmother of the Nawab of Oude—ladies commonly distinguished by the appellation of the Begums of Oude.

English power in India dependent on prestige.

And, my Lords, I trust there is not in this illustrious assembly one person who is yet to be taught the elements of our political situation in the East, and the grounds and foundation upon which our political ascendancy in that country is erected;—that the authority of a few strangers over numerous nations and tribes, differing from them in religion, language, laws, and habits of every kind, depends solely on the thread of opinion—on opinion of our power and on opinion of our justice—of our justice, equally displayed in the punishment of injuries wantonly and maliciously committed and in the requital of services;—that to permit ingratitude, exhibited at the most anxious and perplexing crisis that ever existed

in our public affairs in that part of the world, to go unpunished, would be to teach the nations of that country a dangerous lesson of contempt for our wisdom and our authority, which would soon be followed by the extinction of our power. 15 FEB. 1793.

Law respecting the observance of treaties.

I trust, my Lords, it is as little necessary for me to impress upon the minds of your Lordships an elementary proposition in the law of nations—that all treaties stand upon the condition of mutual amity and reciprocal good faith; and that the violation of that amity and that good faith, on the one hand, authorises the subtraction, on the other, of such stipulations and of such benefits as have been agreed to be performed and exhibited to the other party, and relieves that party receiving such injury from the obligation to perform that treaty, so dissolved by the fault of the other contracting party.

My Lords, I think I need hardly state that, when any treaty is so dissolved, the parties are mutually placed in their original situation in respect to each other—in that situation in which they stood before the formation of such treaty; except only with respect to such rights of retaliation, derived from the particular injury committed in breach of that treaty, as any other person would have receiving the same quantity of injury, at any other time, and from any other quarter. With the assumption of these two propositions—the one respecting our political situation in the East, and the rights of self-defence and self-preservation derived from that situation; the other respecting the law of nations, as a general rule of action applicable to all countries and situations of princes and people in respect to each other, treating with each other, having formed compacts, and those compacts being dissolved by bad faith or by acts that are injurious on the one side or the other—I shall proceed to the discussion of this Article, which, as I have stated already, concerns principally the supposed injury of the Begums, or rather concerns principally the supposed infraction of the treaty entered into between the Wazir on one side, as a principal in that treaty, the Begum his mother on the other, and the English, as guarantees or sureties for the performance of that treaty, through the medium of Mr. Bristow, the Resident at Oude, on the 15th of October, 1775.

Parties to the treaty.

Question for the Court to decide.

This is the principal subject to be discussed before your Lordships. However it may have been spread into a thousand minute and collateral members and ramifications,

15 FEB. 1793. still the question is this—whether the English nation, by the East India Company and by their servants employed in India, did observe with good faith that treaty, till such time as the Begum was guilty of such acts of hostility, on her part, as warranted the subtraction of the Company's guarantee? That is the question immediately for your Lordships to try. If she was so guilty of those acts of disaffection and of hostility which warranted the subtraction of the guarantee, I think I should have little difficulty in showing your Lordships that the sort of punishment inflicted upon her was the most lenient that, under such circumstances, could possibly occur to any persons entrusted with power to inflict; for it was no more than to replace her—and not even that—to replace her in the original unprotected situation in which she stood prior to the voluntary concession of our protection, which was made, as I said before, in the hope and on the implied condition of her continuing amity and good offices.

Leniency of the punishment inflicted on the Begum.

Subordinate charges contained in the Article.

My Lords, I have stated that this is the principal question. I know that this Article is loaded with a great variety of facts, which, as I am furnished with the disproof of them, I will pronounce to be false; with a great number of fabulous illustrations; with a great number of circumstances of aggravation, not applicable to the real truth of the case or to any personal conduct of Mr. Hastings. These, my Lords, as they occur, I shall discuss with a freedom which every accused person is intitled to use at the bar of every human judicature; the fair and full exercise of which, I am sure, will not be abridged or denied to me by your Lordships, and, I trust, will not be attempted to be impugned or resisted on the part of the honourable Managers.

Origin of the connection of the British with the affairs of Oude.

My Lords, it will be necessary for me to trouble you with some little preliminary account of the first introduction of our connection with the country of Oude. I will be as short upon that topic as possible; and that, because I have already at some length detained your Lordships' attention upon it, in the opening of these Articles, and because the subject is not new to your Lordships, having in the course of this trial certainly been considerably discussed. However, it may not be impertinent to state that our more close and near connection with the country of Oude arose in the year 1764. At that time Cossim Ali Khan, driven from the subahdarship of Bengal, took refuge with Suja-ud-Dowla. Suja-ud-Dowla, at that time, elate with the consequence

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which he had received in the eyes of the people of Hindustan, from a very gallant exertion in the battle of Raneeput, in which he had borne the principal share, sometime in the year 1760, and where it was supposed his exertion had turned the fate of that day in favour of the Mohammedan arms—it being a contest between the embattled force of the Gentus on one side and the Mohammedans on the other, a struggle for the empire of that country, the fate of that day was principally turned by the gallant achievements of Suja-ud-Dowla—he, not a little proud of his successes upon that occasion, had undertaken the rash adventure of protecting the expelled Nawab of Bengal, Cossim Ali Khan, and had committed himself in a dangerous and, ultimately, a very unsuccessful war with the British nation.

Defence of Suja-ud-Dowla at Buxar.

Suja-ud-Dowla, after several defeats, at last, by the decisive action of the battle of Buxar, found himself under the necessity of abandoning Cossim Ali—found himself under the necessity of trusting that in which, I hope, no one who trusts, places a confidence in vain—I mean, the clemency and generosity of the British nation. He threw himself, as your Lordships may recollect, unconditionally, upon the uncovenanted and unstipulated generosity of the British nation, by surrendering himself at once a prisoner to General Carnac, in his camp, in 1764. That confidence which he thought fit to place was not abused.

Surrenders to Gen. Carnac.

Is restored to his possessions by the treaty of Allahabad.

With some deductions on account of a provision necessary at that time to be made for the King Shah Alem, with the deduction of the provinces of Corah and Allahabad, with the imposition, in the nature of a fine or a demanded contribution, of fifty lacs for the expenses of the war, and with a further condition imposed upon him, that he should continue his revolted renter, Bulwant Sing, in the tenure of the lands he held under him in Benares, he was restored to all the possessions he before held; and by that treaty—the treaty of Allahabad—which was made with him and his heirs, and of course a treaty of continuing obligation upon the British nation, he was restored to the full possession of his territories, as I have stated; we only stipulating that he should pay us a fine of fifty lacs of rupees, and continue Bulwant Sing.

Second treaty, in 1768.

After this treaty, I think there was another, in the year 1768, with him. It is of so little moment that I hardly need call your Lordships' attention to it. That was requiring him not to exceed the number of 10,000 men, armed and disciplined in the English manner. That was a treaty of unwarranted jealousy on our part; for nothing then done on the part of

15 FEB. 1793. Suja-ud-Dowla warranted us in entertaining a suspicion that he meant to free himself from the condition in which he had placed himself, by the treaty of Allahabad, with the British Government.

Treaty of Benares.

There was another treaty in 1773—the treaty of Benares; and he recovered by that treaty the country of Corah and Allahabad, which had been before granted as a royal residence to the King Shah Alem. And that treaty was of greater obligation than almost any other treaty can be supposed to be, because it had the ratifying authority of the King Shah Alem, the only recognised legitimate source of authority in that country; therefore, if [ever] there was [one], a treaty binding upon the British faith to Suja-ud-Dowla and his heirs, which heir Asoff-ud-Dowla now is. By that treaty, the countries of Corah and Allahabad were taken, not from the King, because the King had abandoned the possession to the Mahrattas, our enemies, but they [were] transferred to the original proprietor, Suja-ud-Dowla, in consideration of fifty lacs, which he paid us; the King having forfeited his right to them, at that time, by having put these countries into the possession of the common enemies of Suja-ud-Dowla and ourselves, the Mahratta Government. Therefore, when that which was granted for his benefit by us was made an instrument of our destruction and annoyance, we, upon the principles of justice, rightly reassumed these countries, and conferred them upon Suja-ud-Dowla, the original proprietor.

Restores the countries of Corah and Allahabad to Suja-ud-Dowla on payment of fifty lacs.

At that time, an agreement was made with Suja-ud-Dowla, reducing to a certainty the sum that was to be paid for the brigade which was officered by British officers for the defence of his country. That, instead of being left at the former inadequate sum at which it had been placed, was brought to a sum more adequate to the expense incurred by the British nation, of two lacs and 6,000 rupees a month.

These were the treaties between the British nation and Suja-ud-Dowla, prior to the time when the subject of the present Article commences; for the present Article commences with the death of Suja-ad-Dowla, which happened on the 26th of January, 1775, about a year and a half after the conclusion of the treaty of Benares.

Death of Suja-ud-Dowla in 1775.

Now, my Lords, at the death of Suja-ud-Dowla, it behoved the Company, and those in charge of the affairs of the Company and the British nation, clearly and evidently to have done two things. I stated fifty lacs to be due to us for Corah and Allahabad: there was a further sum of forty lacs

Sums due to the Company from Suja-ud-Dowla.

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likewise due to us for the assistance we had rendered Suja-ud-Dowla in subduing the Rohillas, who had broken faith with Suja-ud-Dowla, whose assistance they had implored and received, and our assistance confederate with his; and they had likewise embraced as their friends and had entered into an alliance with the Mahrattas, against whom that alliance and assistance on the part of Suja-ud-Dowla had been implored and received. The aggregate sum of the debt of Suja-ud-Dowla was ninety lacs, at one time. It had been reduced, at the time of his death, to the sum of about fifty-six lacs; and there was at that time likewise a further sum of about thirty-nine lacs due, on account of the accruing subsidy, which I have already mentioned to your Lordships, for the brigade, with which he was furnished by the East India Company, according to the stipulated terms of the treaty of Benares.

Duty of the Company.

I was saying that, upon the death of Suja-ud-Dowla, which happened in the beginning of 1775, it was the clear duty of the Company to their servants in trust of their power there, to have done these two things:—first, inasmuch as the treaty of Allahabad was a treaty with Suja-ud-Dowla and his heirs, and as Asoff-ud-Dowla, his son and successor, was that heir, he was intitled to that alliance, offensive and defensive, concluded with him by the treaty of Allahabad, without paying any further price for the benefit of that alliance. He was intitled to every thing stipulated in the treaty of Allahabad, without conceding to us a portion of his territory, which was improperly extorted from him for the continuance of the treaty then subsisting and in full force. That was what the persons then in charge of the Government—Mr. Hastings had, unfortunately, too little superintendence and control at that moment—but that was one of the things that the gentlemen then in charge of the Government ought to have done.

There is another thing which they ought to have done, but did not do, equally to the interest of the Nawab Asoff-ud-Dowlah. They ought to have made available to him, as far as we interfered at all, all the resources that he could possibly, in just right, command for the satisfaction of this large debt. That was a duty to him resulting from our alliance. It was a duty to ourselves. It was a duty written in such plain legible characters upon the mind of any person entrusted with public authority at that moment, that one wonders to find these palpable duties violated and neglected

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The country of Benares extorted from Asoff-ud-Dowla.

in both instances. For the continuance to him of that protection which was stipulated to Suja-ud-Dowla and his heirs by the treaty of Allahabad, we extorted from him, as the price, the cession of the country of Benares.

Improper interference of Mr. Bristow in respect of the treasure of the Nawab.

As to his treasure, which we ought to have rendered available for the purpose of satisfying our debt, what did we do? We suffered our Resident to interpose himself and the shield of the Company's protection between [the mother and] the son—justly intitled to these treasures, either in the character, if you will, of sovereign, or, if you choose it, in the character of subject governed by the Mohammedan law. In either character I will show him duly intitled to these treasures. These treasures were suffered to be wrested from him, by the improper intervention of the East India Company. When I say the East India Company, I mean those who then constituted their authority as members of the Council of Bengal.

These were the plain and obvious duties which at this moment these persons had to discharge. Mr. Hastings, in commenting upon the conduct of Mr. Bristow upon this occasion, in a Defence which has been read to you, says, that if there was any interference at all—that is, he says that in substance, but I will read his words—that if there was any interference made in the concerns of Oude, it ought to have been an interference, however irregular, in favour of the Nawab; and that, if we had interfered in favour of the person rightfully intitled, and had so obtained for the Company a satisfaction of this just debt, the merit of the service and its utility would have outweighed some irregularity. This is what Mr. Hastings, in the Defence that has been read to your Lordships, expressly stated.

It is somewhat extraordinary that any honourable Manager should find those words capable of being distorted, so as to mean that the enormity of the plunder would atone for the offence;—for that was the way in which one of the honourable Managers, with great brilliancy, distorted that and a thousand other passages, and by that distortion made a very powerful picture, to be sure, of the evidence on the part of the prosecution.

The words of Mr. Hastings are these:—

Opinion of Mr. Hastings on the subject of Mr. Bristow's interference.

"That, as Mr. Bristow chose to interest himself in reclaiming the Nabob's rights, he ought to have asserted them effectually; and, had he done so, the magnitude of the service [which he would have rendered by it to the Nabob, his immediate employer, and to the Company, who would have been eventually benefited by it, would have largely

overbalanced the irregularity of the mode, and entitled him to] applause instead of censure."* 15 FEB. 1793.

Now, my Lords, what does the honourable Manager say upon this? These are his words:—

"This is one of those detestable and abominable doctrines which if you do not stigmatise—which if you tolerate—there is an end to any pretence of retrieving the character of this country, or establishing any opinion of her faith or sincerity in India. Mr. Bristow is a poor, paltry, plunderer: he took only a little; whereas, if he had seized the whole, the enormity of the plunder would have been his justification. And this sentiment he utters with respect to Mr. Bristow's conduct at the very moment that that conduct of Mr. Bristow was stigmatised by him on the records of the Council Board—which he called an act of extortion and exaction against the rights of the Begum; and now he says, the only fault was that Mr. Bristow did not seize the whole."†

Does Mr. Hastings say a word like it? There is nothing so mischievous to these fine periods as to collate them with the fact. The fact is that Mr. Hastings said:—"I think meddling between the Wazir and his mother is mischievous and improper, and an irregular thing; but if in virtue of our intimate connection with the concerns of the country, if in virtue of the large debt owing to us, it should be at all allowable to interfere, interfere, for God's sake! on the right side and not on the wrong." Now, if there be anything so abominable in this, it certainly exceeds the reach of my understanding to find it out, and, I believe, it would the reach of any person, reading the two passages together as I have done, and not the one by the other, as it was convenient for the then purpose of the honourable Manager to state them.

The management of his revenues entrusted by Suja-ud-Dowla to the Begum.

My Lords, at this time you see the Resident interferes in order to protect the Begum in the enjoyment of—what? Why, it had been the habit of Suja-ud-Dowla for a great length of time, nay, so early as from the year 1764 down to the time of his death in 1775, for the eleven last years of his life—entirely to commit the immediate management of his revenues to his wife, as his public treasurer. In that country, secluded as the women are, yet I find it laid down in the books of the best authority—in the Hedaya—a comment on the laws of that country, a book of the highest authority in the Mohammedan world—that women are capable of exercising

* "The Real State of the Facts contained in the Fourth Article of Mr. Burke's Charge," &c.—Printed in the "Minutes of the Evidence," p. 363.

† Speech of Mr. Sheridan in Summing up the Evidence on the Second Charge.—Supra, vol. i. p. 503.

15 Feb. 1793. offices, even that of a kazee.* But, however, certainly this she did exercise for eleven years together before the death of her husband; and so well known was it that the treasures which Suja-ud-Dowla had were deposited with his wife and mother, that, General Carnac, writing, in the year 1764, to the Board, after the battle of Buxar, and when that treaty was in agitation which I have mentioned, the treaty of Allahabad, by which it was to be stipulated that fifty lacs were to be paid to the Company, as a compensation for their expenses, states to Lord Clive, that the business of the money could not be settled till the women had come up with the Wazir, for he understood that all the money he had was lodged with them;—not given to them, as the honourable Manager alleges, for, if so, he had made the greatest and most extraordinary gift ever given.

His treasure deposited with her on trust.

The supposition of a gift incredible.

What is the gift he is supposed to have made? He gives, in 1764, not only all he had, but should have—all the rents and profits of his lands; in short, the whole of the prospective profits of his dominions he gives to his wife! Is it not absurd upon the face of it? And yet, the honourable Managers have not produced one particle of evidence. Day after day, week after week, of painful suffering did we come here to hear what, without any disrespect to them I will say, was upon the subject—chaff! There is not upon the Minutes anything that would induce a man of the lightest belief, of the infirmest understanding, to infer a gift—from anything that they have laid before you. And yet, that [is assumed], though they did not venture to charge it in the Article, and your Lordships will not find it in the Article; for whoever framed the Article had a little more prudence than to allege a gift or title; nothing but possession is alleged in the Article;—the person, therefore, whoever had to judge of the evidence, as applied to the allegation, squared his allegation to no title at all, for he could not find a gift—testament—anything by which a title to treasures could be derived.

Description of property in deposit with the Begums.

I wish the honourable Managers would now suggest what sort of title this woman could possess these treasures upon. I will see what the Article chooses to predicate of them: it does not call them treasures. What was in deposit with the Begums? Elephants, cannon, muskets, military stores of every kind; this is the gift of a prudent husband! Suja-ud-

* "The Hedaya, or Guide: a Commentary on the Mussulman Laws. Translated by Charles Hamilton."—London, 1791; vol. ii., p. 633.

Dowla, at war with his neighbours, having constant occasion for the use of these stores, is supposed to make [them] over in his lifetime to his wife! That is the rash sort of supposition your Lordships are desired to make. [As for] evidence, there is nothing that bears the name or colour of it.

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Now, what does the Article choose to predicate of her rights? It says that she was "in possession of certain landed estates, called jagirs, and certain valuable moveables." These were the sort of things I have stated to your Lordships. Do they venture to state any title? They have not ventured to insinuate it. That of the gift is afterwards stated upon the face of your Minutes, and to which I shall address myself presently. I had nearly forgot one allegation, that comes before the statement of the supposed right to the treasures by virtue of possession. They state who the ladies are, and, as if there was something in [it], the history of Suffdar Jung, who is described by one writer of the history of that country not to have been a man of very illustrious descent, though I believe he was a Persian nobleman, but he is stated to have been a pedlar. Now, for fear that this man and the ladies connected with him should not be ushered to your Lordships with a sufficient respect and dignity, and as connected with Suffdar Jung, the honourable Managers, in the former part of the Article, choose to put forward the descent and pedigree of the elder Begum. It states she was the daughter of Saadat, the predecessor of the said Suffdar Jung in the government of Oude.

No title but possession asserted in the Article.

Parentage of the elder Begum.

The honourable Manager did not do that; for, whoever was the cautious framer of this Article—cautious in this particular—he chose to interest in the favour of these ladies all that deference and all that respect which one feels for persons nobly descended, and all that increased degree of compassion which one feels for the supposed injuries of persons honourably and worthily descended. That certainly was the object of the framer of this Article. Now, in God's name, who was this Saadat? My Lords, if we raked in all the sewers of infamy, if we culled with the most curious felicity everything that was base, dishonourable and detestable, in the present and in the past age, if we adorned it with the most compendious name of villany by which the worst man in Europe is at present distinguished, we could not present to your mind such an image of perfect wickedness and worth-

Infamous character of Saadat.

15 FEB. 1793. lessness as this same Saadat! You will expect my proof. I will give it.

He connives with Nizam-ul-Mulk to betray Mohammed Shah to Nadir Shah.

This Saadat was, with the Nizam-ul-Mulk, one of the ministers of the last effectual and reigning prince of the house of the Mogul dynasty, Mohammed Shah. They were the favourite ministers, entrusted and plentifully endowed by that prince; they were jealous of their better and more worthy rival Khani Douran. These two wretches, having for years enjoyed all that a generous and bountiful monarch could bestow upon them, formed the plan of their rival's ruin—Khani Douran's ruin; and, with that ruin, the ruin of their own sovereign, the subjection of their own country to a foreign and a barbarous yoke. And, for this purpose, they applied to the minister of that daring and sanguinary tyrant, Nadir Shah, who at that moment happened to be upon the borders of the kingdom of Candahar, on the frontiers of the Mogul empire. They formed with him a treaty, the object of which was to enrich themselves and to ruin their prince and their country. Still entrusted by their sovereign, what do they do? They cripple all his operations of war. They prevent his putting himself in a state of defence to meet the force of Nadir Shah which was coming down upon them; and, at last, Saadat, this valuable ancestor of these ladies, throws himself in the way of Nadir Shah, for the purpose of counterplotting his rival Nizam-ul-Mulk, and for the purpose of having a conference with Nadir Shah, in order to get the better of his rival Nizam-ul-Mulk. Thus was this villanous wretch making a bargain for himself and the empire; and he trusted himself —a desperate hazard—to the mercy of Nadir Shah, who comes to Delhi and takes possession of that city. And now I will read the manner in which he justly enough chose to serve these miscreants:—

His double treachery.

Treatment of the traitors by Nadir Shah.

"The King of Persia, finding himself in possession of Delhi, called Nizam ul Muluck and Sadit Chan into his presence, and addressed them in the following extraordinary manner:—'Are not you both most ungrateful villains to your king and country, who, after possessing such wealth and dignities, called me from my own dominions to ruin them and yourselves? But I will scourge you with all my wrath, which is the instrument of the vengeance of God.' Having spoken these words, he spat upon their beards and turned them with every mark of indignity from his presence."

Being thrust out into the outer court, these gentlemen laid their heads together and resolved that it was impossible to live under this indignity, and they proposed to go home

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each of them and swallow poison. Saadat Khan, who suspected Nizam-ul-Mulk would not not be so good as his word, sent a trusty spy to watch him and see whether he would take the poison. Nizam-ul-Mulk was the more cunning man of the two: he instructed a servant to bring him something which should appear as poison. The servant with trembling hesitation gives it him. He drinks it and appears to be seized with the agonies of death, and presently carries the feint through and appears to die. Saadat's spy who sees all this is the dupe of this artifice: he goes and tells his master. And then, Saadat, with a strange, perverse, sort of honour, which for the first moment of his life and the last seized him, actually takes poison and dies; and thus he becomes the dupe of his own villany, and the instrument of his own punishment. Now this is the illustrious ancestor of this lady, who is to give an eclat and lustre to the family, and who is to conciliate such an extraordinary degree of compassion to the supposed sufferers!

Saadat, duped by his accomplice, commits suicide.

I will now return to the Article, as to this property and these valuable moveables which they were possessed of, "for the purpose, as well of maintaining their own rank and dignity, as for the maintenance of their numerous family and dependants."

Now, as to their jagirs and landed estates. Most liberally endowed they unquestionably were by the bounty of Suja-ud-Dowla; and so endowed as to preclude any idea that he meant to confer upon them any part of that property —if indeed he could as sovereign, exclusive of the son and successor, which I doubt—[which was required] for the necessary purpose of the exigencies of the state. The youngest of these, the Bow Begum, had jagirs to the amount of between five and six lacs a year, of Suja-ud-Dowla's endowment. The elder had about two lacs a year. One between 50,000*l.* and 60,000*l.* a year; the other between 20,000*l.* and 30,000*l.* But, however, this would not do. These valuable moveables were the things she chose to set up a claim to, merely from having acted in the dispensation and payment of these treasures, during the life of her husband. But, when we are to consider what right is to be derived from possession, let us consider in what manner it is possessed; for, if a person possesses it so as to be applied to the uses of another person, that is an evidence that it is the property of that other person.

The jagirs and landed estates of the Begums.

Purpose for which the treasure was entrusted to the Begum.

Now, from what source were the exigencies of Suja-ud-

15 FEB. 1793. Dowla supplied, but from this? She states that the fifty lacs, paid in consequence of the Allahabad treaty, as the expenses of the war, were paid from these. We know, and it is in evidence, that Mr. Grady, who received the sum of fifteen lacs paid on account of the Rohilla treaty, and other sums, received them from her. But the honourable Managers choose to rest upon an extraordinary argument resulting out of the payment, and from a fact respecting that payment, which they thought furnished a conclusion that the treasures were the Begum's, and not the husband's. The fact is this:—Suja-ud-Dowla gives an order upon them; it was not paid. Upon going back, and the treasurer certifying it, it was paid. Put it as a common thing in office. Suppose the subject of any country was to give an order upon a treasury appropropriated and under the management of any particular officer of the revenue, would that draught be answered immediately, or would not the draught of the executive officer be substituted and paid? In that way, and that alone, was this money paid as received by Mr. Grady.

Her payments to the Company.

Improbability of Suja-ud-Dowla having made over the treasure as a gift to the Begum.

But, my Lords, if this is to be considered as a gift—a gift without any object—one would consider whether it is at all natural, whether it is probable, that Suja-ud-Dowla, in his situation, should have given this sum of money from his immediate heir, who would have the most immediate want of it, to a person who could have no want of it at all. What was the situation in which this father left his son? He left him with conquests recently acquired; with an army of near 140,000 men near two years in arrear. He left him with his debt to the Company of between 800,000*l.* and 900,000*l.*; and he left him in his private treasury but 15,000 rupees, or about 1,500*l.* English money. A pretty beginning, to command that empire and pay all those troops with! Can you believe that any man should so divest his successor of all the means of maintaining that state which he left him in charge—can you believe that any man should divest his successor of all the means of maintaining those conquests to which he was attached, of discharging the duties which must necessarily devolve upon him, and a son for whose immediate interest, to the very latest moment of his life, he seems to have been particularly anxious? Without troubling your Lordships with a repetition of what I formerly stated, it may possibly be in the memory of some of your Lordships that I read a letter of very pathetic eloquence from Suja-ud-Dowla himself to Mr. Hastings, written—as expressed in that

The necessitous position of his son and heir.

letter—in the very agonies and instant expectation of death; and, in that letter, he recommends to his particular affection and favour his son—desires that he may be considered as standing in his place; and this without reference to or mention of any other member of his family. I, therefore, conceive it perfectly impossible that a man thus anxious for the continuance of his power, thus well affected to his son in his dying moments, should have stripped him in his lifetime of all possibility of maintaining those dominions which would devolve upon him within a few minutes of writing that letter. 15 Feb. 1795.

His intention to build a fortified treasury.

But, what shows most clearly that the treasures were only lodged with this woman for safe custody, and that Suja-ud-Dowla did not wish to continue them, there is, as we shall prove, evidence that he had, from the year 1770 down to 1772 or 1773, been constantly desirous of having a place of strength erected to contain his effects and family; that he had addressed a request upon that subject to the Governor General and Council, through Captain Harper, as he then was; and had repeatedly desired, through General Barker, that a person competent in point of skill to erecting such a fortress might be sent him. From some reason or other—what I do not know—such person was not furnished to Suja-ud-Dowla, and he actually employed a French engineer to give him a draught of a fortification, which draught Colonel Bruce saw and made a copy of. So it was in his meditation, for many years before his death, to have had a more secure place of deposit for those effects.

But it might have been said to him, it seems, "Why do you want a place of deposit for your effects?—why, you have none. You have given all your effects to the Bow Begum." That conduct is inconsistent with any such idea, as is evidenced in his application to the Council General. The argument, therefore, in favour of this supposed gift, is mere possession. But, as this is a possession which is continually trenched upon by the application of the real owner of these treasures to his own uses, it comes to be nothing more than the mere possession and custody of a servant. But it struck an honourable Manager that the possession alone by a man's wife of all his treasures was not very good evidence of his gift to her of all those treasures, particularly when the husband was every hour using them; and, therefore, the honourable Manager chose to put it with great emphasis and force upon another ground, and that is—the

15 Feb. 1793. inviolability of the place in which these treasures were deposited. Says he:—

Argument of the Manager derived from the sanctity of the zanana.

"Treasures that are lodged in a zanana are, from the respect that is paid to women in that country, irresumable; and, being there under charge of the women, whether got there right or wrong, no power on earth in India can restore them to the right owner."

That is the scope of his argument; and, feeling that your Lordships might think this sort of argument a little ludicrous, he begs an extraordinary degree of seriousness on the part of your Lordships before he should advance to it. He says:—

"It is too much, I am afraid, the case, that persons used to European manners do not take up these sort of considerations at first with the seriousness that is necessary, for your Lordships cannot even learn the right feeling of these subjects from any history of other Mohammedan countries, or the Turks, who are a mean and degraded race in comparison to many of these great families, who inherit from their Persian ancestors a purer style of prejudices and a loftier superstition. Women there are not as in Turkey. They neither go to the mosque nor to the bath. It is not the thin veil alone that hides them, but, in the inmost recesses of their zanana, they are kept from public view by those reverenced and protecting walls which, as Mr. Hastings and Sir Elijah Impey admit, are held sacred even by the ruffian hand of war, or by the more uncourteous hand of the law. But, in this situation, they are not confined from a mean and selfish policy of man, not from a coarse and sensual jealousy. Enshrined, rather than immured, their habitation and retreat is a sanctuary—not a prison. Their jealousy is their own jealousy, a jealousy of their own honour, that leads them to regard liberty as a degradation and the gaze even of admiring eyes as inexpiable pollution to the purity of their fame and of their honour."

It struck me afterwards as something singular, that these ladies, who could not go to the mosque or to the bath, were anxious perpetually to go a journey of two thousand miles. The Bow Begum repeatedly desires a ship to transport her to Korbulla.* Whether she had any idea that she could carry the treasures away with her—or what was her reason: or whether, like Hippia in Juvenal, in despite of the dissuasion of her friends, she was ready to have endured all the inconveniences of that journey, exposed, as she necessarily must be in the course of the voyage, not only to the eye and gaze, probably, but even to the more defiling contact of men;—but all this she was willing to have endured, whether in despite of them, or supposing she could carry away this treasure. If she had been gratified in this wish, we might have found her like the same person:—

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* Another name for Mecca.

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["Si jubeat conjux, durum est conscendere navim;
Tunc sentina gravis, tunc summus vertitur aër.
Quæ mœchum sequitur, stomacho valet. Illa maritum
Convomit; hæc inter nautas et prandet, et errat
Per puppim, et duros gaudet tractare rudentes."] *

This is the lady who must necessarily consecrate the treasures because they were near her person! No right whatever is so strong, no demand of the state so urgent, no necessities of the country starving for want of this source of supply, and the prince crippled in every operation of his public government for want of the treasures of the state, unable to satisfy its creditors—all this is to stand still and all these purposes to be frustrated, because this lady cannot go to the mosque or the bath without violation of prejudices, which prejudices are not to be violated to do an act of justice!

Fails to establish a right to the property deposited therein.

I am at a loss respecting the language which is held as to sanctuary. I shall prove that the Begum had no other right; neither gift nor intestacy. Suppose the Wazir were intitled to these treasures, then he must be robbed and despoiled of them by the mother who withheld them. I have heard of a sanctuary that protects the person of the thief, but I am at at a loss to find any sanctuary that protects the plunder. Therefore, without the honourable Manager can refer me to some further authority on the subject of sanctuary than our law books have enabled me to obtain, I am at a loss why these treasures, merely on account of their proximity to the person of the Begum, should be protected and privileged from the hand of the law.

As the Article has not chosen to state anything of title to these treasures, the honourable Manager who summed up this Article having stated that, on the face of it, whatever treasures were given or lodged in a zanana of this description must, on the evidence of the thing itself, be placed beyond the power of resumption, said that to talk, as the Counsel had done, about the original right of the Nawab to these treasures, as derived from Mohammedan laws, is futile and frivolous; and now he comes to state a title—a singular one enough—to these treasures:—"their title to them is the title of a saint to the relics upon an altar, placed their by piety, guarded by holy superstition, and to be snatched from thence only by sacrilege."

Now, the title of a saint! Saints have either left the

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* Juvenal. Sat. vi. 90.

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Dissection of the title alleged by the Manager.

world or renounced it; they are either dead or have renounced every thing that the world gives. I never heard of the title of a saint. I have heard of priests or persons claiming under gifts to pious uses, but of the title of saint I never before heard. But what is it? A title to relics and an altar. Did your Lordships ever hear of muskets, camels and elephants, and every instrument for transporting the baggage of an army, as relics upon an altar? How are we to get them upon the altar? It is ludicrous. And this is to follow a reprobation of the Counsel for talking frivolously!—But they are "placed there by piety." Why, he is as unfortunate with his piety. The piety is the hand of Suja-ud-Dowla, red with blood, that had recently taken them as the spoils of his wars.

Then, the next is "guarded by holy superstition." Guarded! They were guarded by a couple of eunuchs. Whether they are more holy I do not know; they are involuntarily more innocent. But that is the "holy superstition." Then, "snatched from thence only by sacrilege." How sacrilege? If a temple or any place consecrated to pious purposes is turned into a depôt of arms or treasures, is there any sacrilege in using the place as the people within it have made it? I have never heard of any sanctity that protected the table of the money changers; and this zanana was made a place to keep from the rightful owner, the Wazir, by the Begum, the treasure of his father and his realm, and which he would have been well warranted to dispossess her of by any means of force, if gentle means had not been sufficient for the purpose.

Now we have, therefore, the title. The honourable Manager, not having liked the Article which had modestly forborne to state anything respecting the right, was resolved to make a title of his own. Your Lordships are witnesses of his success.

Another honourable Manager was resolved to put it upon a better ground. Says he:—"The zanana will not do, but there is a respect in that country that has the ascendancy. Filial piety so transcends every thing in that country, that in these colder climates we have no idea of it; and every thing that is in the possession of the mother must be so venerated by the son, that it is a violation of every law of nature and of religion to dispossess the mother, however she may have acquired it."* And, for that purpose, one honourable Manager, who

Claim on the ground of filial respect.

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* See Speech of Mr. Sheridan, vol. i., p. 494.

opened these Articles originally to your Lordships, gave us an extract from a book which the course of my reading had not led me to before, and which really a regard for delicacy would have forbidden; for there are in it passages which are more fit for an attorney general to comment upon than any book I ever had put into my hand. That book states, as a reason for the Begums being left in the undisturbed enjoyment of these treasures forsooth, that a Sultan of the Ottoman empire, Mohammed the Fourth, had treated his mother with such peculiar courtesy that he never received a woman but at her hands—in short, that he had invested his mother with the honourable office of first procuress to his seraglio.*

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Objectionable authority cited by the Managers.

Your Lordships will wonder, at this distance of time, how such a book as this came before you. My Lords, it did not without our resistance. The honourable Manager stated that the thing contained a custom of the Mohammedan religion, which is a general custom through every Mohammedan country, and that, therefore, he was giving in evidence that which was competent upon a question of Mohammedan customs, government and religion, [it being] obligatory upon every person who professed that religion. It turned out to be the sort of document I stated; and, if the gentleman chooses to let that book be the code from which we should take the practice of domestic relations, I have no objection, for I have had the trouble of reading the book since. Will the gentleman say he will take that as his code of morality? If he does, this man, that thus indelicately respected his mother, instantly puts the bowstring about the neck of the old Begum; for the first act of that prince's reign that has been cited was to strangle his grandmother; and it will be found in the first page of Prince Cantemir, to which that honourable Manager refers.

Its incompatibility with other portions of the charge.

We are charged, on the part of Mr. Hastings, with not having attended properly to the observation of the duties which the Wazir owed to the other members of his family—to his brothers—and I think it is in Charge, that we suffered the Wazir to allow no more than 20,000*l.*, a year, to one of his half brothers, which is stated as an inadequate allowance.

* The extract referred to is from "The History of the Growth and Decay of the Ottoman Empire, written originally in Latin by Demetrius Cantemir, late Prince of Moldavia; translated into English from the Author's own manuscript by N. Tindal;" London; fol. 1734-5, p. 296.—It is printed in the "Minutes of the Evidence," p. 427.

15 FEB. 1793. Will the honourable Manager refer to Prince Cantemir again for the manner in which, according to the Mohammedan customs, brothers should be treated? Instantly all his brothers expire; for Mohammed the Third put to death twenty-two of these brothers, and threw into the sea eight pregnant concubines, in order to destroy the race of his father. I state this to show that there is a general chain of misrepresentation—unintentional, I am compelled from my situation to acknowledge—but that there is a chain of misrepresentation, however it comes about, that runs through the whole evidence that has been laid before you.

Title by gift equally applicable to the government of the country.

The argument of gift which I have been discussing before would go a little too far; for, if your Lordships inferred he had given her everything he possessed, he had given her his government too; for it appears in evidence that has been laid before your Lordships—or will be, if not already—that he had given her the seals of his government, and that she performed every act of executive administration as representing him, during the whole of his reign. Then she would have been intitled to have held the government as against her son, in virtue of these seals, inasmuch as she was intitled, in virtue of the possession of treasures, to hold them against him and any claim made on behalf of his creditors or his subjects.

Mr. Goring's evidence respecting the wealth of the widow of Suja-ad-Dowla, in 1775.

The other ground upon which the honourable Manager has chosen to put the right is that of the zanana, the place of deposit. Now there has been a fragment of evidence, which I thought so little like evidence that I thought it no evidence at all, but which I will now refer to, which is the evidence of Mr. Goring. And Mr. Goring has said, that he, visiting, about the year 1774 or 1775, the widow of Suja-ud-Dowla, who your Lordships know was the Nawab till the year 1756, and who was destroyed soon after the battle of Plassy, found her in a state of considerable opulence and affluence; and, knowing of no other source of her wealth, he had inferred that she must be thus rich and opulent from the circumstance of treasures having been deposited in her zanana. A pretty bold, random, inference of Mr. Goring! For, not knowing anything of the fact of any treasures being deposited there, he might just as well have supposed that she had found Aladdin's lamp, Fortunatus' cap, or the philosophers' stone. Any miracle he might have supposed in her favour as well as this; because no man alive has ventured to say that they knew an instance recorded in books, or which

His inference of treasure deposited in the zanana.

has occurred in experience, where a person has ever attempted to support a claim to treasures from their being deposited in a zanana. Your Lordships will bear in mind who this lady is. It is the wife of Suja-ud-Dowla, who, your Lordships well know, immediately after the battle of Plassy, took his flight from his residence at Moorshedabad, was taken in disguise, brought back to his palace there, and put to death, as it was supposed, by Miran the son of Mir Jaffier. 15 Feb. 1793.

Now let us consider the probability. In the first place, Suja-ud-Dowla was not likely to have provided for the distant contingency of the provision of a wife, from whom he might be torn by the sudden accidents of war or revolution of Government; for, till the battle of Plassy—which was an extraordinary event, and no human creature could have foreseen the extent to which the British arms were successful upon that occasion—he was in the undisturbed possession of power. He was very young, and, therefore, not very likely to contemplate his death, and to make that provision for the wife that should succeed him. Was it from affection? You will find that, in escaping from the palace at Moorshedabad, he had gone off with a favourite concubine. The wife is not, therefore, the person for whom he was likely to have made this provision.

Improbability of the supposition.

But is it likely that, if that treasure had been left in the palace, possessed as it was immediately after by Mir Jaffier, it would have escaped the rapacity of Miran, or the still greater avarice of his successor, Cossim Ali? Is it possible that the palace in which they resided—and your Lordships observe I am combating a mere supposition—but is it to be supposed that the treasures would have been so left to protection and so transmitted? It is highly improbable in itself. But, improbable as it was, the honourable Managers seem to have assumed it as proved, for they immediately follow up those questions, which had produced from the witness nothing but a supposition, with this question:—Did he ever hear that Mir Jaffier demanded the treasure deposited in the zanana? No proof of any kind that they were deposited there existed, and yet the honourable Manager followed it up, as if it had been a thing in complete proof.

I would not detain your Lordships upon this so long, but that it happens I am enabled completely to disprove this rash supposition of Mr. Goring; for I can and shall show to your Lordships the source of the moderate provision—for it was not considerable, not that opulence and affluence

Her wealth derived from inheritance.

15 FEB. 1793. which he has chosen to predicate of her — I shall show the source of that very substance which she had. And it is singular enough that, about the year 1782, upon the death of a considerable jagirdar of the province of Patna, of the name of [Mohammed Erick] Khan, there was a dispute about the succession to his estate; and it came before the Council at Bengal, and is upon their minutes, that this widow of Suja-ud-Dowla claimed the estate which her father held, saying that it had been settled upon her at the time of her marriage by Aliverdy Khan, the grandfather and uncle of Suja-ud-Dowla. She said it was settled by Aliverdy Khan for her benefit, and she produced, what was extremely extraordinary at that distance of time, the parwana of Aliverdy Khan—a letter or instrument of his, executed to [Mohammed Erick] Khan her father, in which he tells him that he had received an instrument declaring the trust on which he held these lands for the benefit of his daughter, and, though he thought as between father and daughter it might be superfluous, yet, considering the possibility of accident, he thought it not an improper precaution. I have a letter from Aliverdy Khan to that very effect. Upon which claim, her right to the land was allowed to her, exclusive of another claim of her sister, who, unless this had been thus settled upon her, as joint heiress of her father would have been equally intitled.

Partly from a pension from the Nawab.

But more—this provision was not extremely ample; for your Lordships will find, upon referring to your Minutes, this very wife of Suja-ud-Dowla had an allowance upon the reduced pension establishment of the present Nawab, to the amount of between 500*l.* and 600*l.* a year, about 450 rupees a month, for her maintenance, by name as the widow of Suja-ud-Dowla. Now, in the reduced state of that Nawab's finances, it is not extremely likely that such an allowance would be made if she had an ample source of provision elsewhere, particularly derived from the possession of treasures in a zanana belonging to Suja-ud-Dowla, in prejudice to his successor. My Lords, the place which I refer your Lordships to is the Appendix, page 582. The Bow Begum, Suja-ud-Dowla's widow, is described as having a pension of 450 rupees a month.

We will now endeavour, as the honourable Managers have occupied really so much time in discussing the sort of claim to this treasure, and have thought it essential to their case, as most essential it is on our part, to show the original right

of the Wazir to this treasure. Inasmuch as, upon the dissolution of the treaty of guarantee, he recurred to that right, and we recurred to our claims upon his funds bound to the payment of our debt, it is material for us to establish that the original right was in the Wazir. 15 Feb. 1793.

Now, what is the law in that country respecting bequests? She could not take a penny by bequest by the Mohammedan law. I find in the Hedaya, published by Hamilton, volume iv. page 468:—

The Begum's title by bequest barred by the Mohammedan law.

"If a person shall dispose of a third of his property to part of his heirs, he can leave but a third away from those who are entitled to representation; and that one third must not be given to those who take by representation. He cannot so bequeath his property."

Therefore all idea of her claiming by bequest is out of the question. Then, if she claim as in the case of intestacy, how is the law of that country?

"If a man dies leaving no children, his wife has a fourth; but if he have issue"—

I am quoting the text of the Koran, chap. iv. page 62—

"but if he have issue, then she shall have the eighth part of what he shall leave, after the legacies which he shall leave and his debts be paid."

Were the debts paid here? Not a penny of this enormous debt which he owed to his army, and which he owed to us!

Therefore, in the first place, the Wazir was unquestionably, upon the foundation of right, intitled to have had the possession of all these treasures: then, he was first of all to have applied them—I am now supposing it to be the case of a subject, as controlled by the law of the Koran; as sovereign he is unquestionably intitled to the whole, but consider it as the case of a subject—to the discharging of our debt and the debts of the army, the debts of his father; and the surplus, after that, would have been divided in such a manner as to have given her one eighth.

The claim of the Wazir supported by law.

But I defy the honourable Managers to produce one instance, in any one book upon the subject of the division of property, in the case of the death of any monarch, where the treasures of that monarch have been considered as governed by the rules which regulate private property—where the treasures have not been considered as treasures of the state. Certainly, nothing of that kind has been produced; and I am confident, from all the inquiry I have been able to make upon the subject—giving the honourable Manager the advan-

15 FEB. 1793. tage of Cantemir into the bargain, and of all the books he can find upon the subject, whether Ottoman or in whatever countries the Mohammedan law may be supposed to prevail —search where you will, you will not find an instance where the treasures of a monarch, raised as these were, the fruits and spoils of war, have been considered as distributable by the ordinary law of the land. But, if they were so, show me that she could have claimed more than her eighth, after the satisfaction of every thing. It is hardly necessary to go back to show that, where there is a joint possession—there are cases in the law repeatedly, where the husband and wife jointly occupy the house or use the same thing—no gift shall have effect, though formally made; because there must be an entire relinquishment on the part of the giver, and the sole use and possession of it on the part of the person to whom the gift is made.

No gift can take effect during joint possession.

Such, then, being the situation of the parties in respect to the right — there being no pretence of gift, none, as I have shown, of will, none in the case of representation upon the supposed event of an intestacy—I will then consider, as there seems to be no claim whatever—for I wish the honourable Managers would suggest any other source from which he could derive a claim but this — and it having been stated in what manner these treasures were appropriated by the improper interference of Mr. Bristow—I will next consider whether Mr. Hastings has, as the honourable Managers choose to assert, recognised the original right of the Begum to these treasures, independent of the treaty of October, 1765, under which alone, if intitled, she is intitled to have them—under which alone she could not be dispossessed of them; holding them by the plighted faith of the British nation, till such time as she forfeited the benefit of that guarantee.

The Begum's title dependent on the treaty of October, 1775.

The honourable Managers state, in page 447, that they will show —

Mr. Hastings alleged to have recognised the Begum's right to the treasure.

"That Mr. Hastings resisted the whole of the Nabob's claim to the treasure, and asserted the right of the Begum."

This is what the honourable Managers now take upon themselves to state, in order to estop us from contending that there was that original right in the Wazir that we are now contending for.

"We will show that Mr. Hastings resisted the whole of the Nabob's claim to the treasures, and asserted the right of the Begum."

Now, what is the document they state for that purpose? I will show your Lordships what it is; and your Lordships will see in a moment that it is misapplied and perverted, and that it cannot bear any such construction as that they wish to put upon it. 15 FEB. 1793.

History of the treaty of October, 1775.

Your Lordships recollect that Mr. Bristow having been—I do not know whether I have stated that circumstance; but, perhaps, in order to possess your Lordships of the rights of the parties a little more perfectly, I might state the negotiation which took place respecting the treaty which was afterwards concluded, upon the 15th of October, 1775. He began a treaty with the Begum and the Wazir. The Wazir, being in a state of extreme want, obtained from the mother the sum of twenty-six lacs. Being unwilling to force his full legitimate right upon these treasures, he accepted first these twenty-six lacs from her as a loan. And she took very good care of her own securities and of the means of indemnification against the loan; for this very generous mother took a security by a jagir, bringing in four lacs a year; so that she had granted to her an estate of land, for life, of four lacs a year, in consideration of the loan of twenty-six—a little more than six years' purchase, landed security—usury that would beat the usurers of Europe!

Terms on which the Wazir agrees to resign all claim to the treasure.

Afterwards, by the intervention of Mr. Bristow, she was induced to grant another sum of thirty lacs; her treasures being, as Mr. Bristow has stated, at the lowest computation, 170, but, by another computation which he gives, and which seems much more probable, 400 lacs of rupees, or four krors of rupees—that is, 4,170,000*l.* She grants twenty-six lacs, taking this security. She grants a further sum of thirty lacs; and in consideration of that—such was the bargain Mr. Bristow made—the Wazir was to relinquish all claim upon the rest of the treasures she had, and to grant her her jagirs exclusively, the rents and profits of them to be received by her own people.

Now, how were these thirty lacs agreed to be paid? The same spirit of extortion appears in the mother again. She insists upon paying, out of these thirty lacs, eleven in those spoils of war—in elephants, in camels, and in old worm-eaten cloth—which, as Mr. Bristow observes, was turned over to the son at five times its value—and muskets. It puts one in mind of a scene in a comedy, where the father is making an extortionate bargain with the son. It outruns that; and there, it is singular enough, muskets are a part of

15 FEB. 1793. the bargain. Does she perform that bargain? Of eleven of these lacs four were left unpaid to the last moment. Yet, even so, if the Wazir was disposed to put up with it, the Company wished not to open a source of dispute between them, and they considered this treaty to which they had given their sanction as binding, and did not choose it to be disturbed.

Mr. Hastings recognises the Begum's title, as derived from the treaty.

Now, my Lords, I am coming to the proposition in which the honourable Managers say Mr. Hastings recognised the original right of the Begum. What he there says is at the period of four months after the execution of that treaty that invested the Begum with the exclusive right to these things, and he is speaking of the right as vested under that treaty; and I wonder the honourable Managers could have chosen to produce this as a document recognising the original right of the Begum to this treasure. I will read the language of Mr. Hastings' minute, from which they would draw this conclusion:—

"Had the Nabob chosen to have made use of the means with which his own power supplied him to exact money from the Begum, his mother, this Government would have wanted a pretext to interfere in her behalf. But, as the representative of our Government was become an agent in this business, and has pledged the honour and faith of the Company for the punctual observance of the conditions under which it was concluded, we have a right to interfere; and justice demands it, if it shall appear engagements have been violated."

Is not this a clear reference to the right she derived under the treaty? Is anything glanced at of original right? Is it capable of equivoque? Can there be a doubt? If there cannot be, I can only lament, as I must again and again, that the honourable Managers have chosen to produce these documents to your Lordships, in proof of propositions which they do not warrant and cannot sustain; trusting, what I am sure they could not safely trust to here, that the allegation would have full credit given to it, and that the proof would no be looked into.

The Wazir's alleged recognition of the right of the Begum.

My Lords, the same thing is said respecting the Wazir. The honourable Managers contend that the Wazir likewise admitted her original right to the treasures. Now, the document that is read for that purpose completely falsifies the proposition that is laid down. They say that the Nawab, in the course of the dispute, admitted that everything in the zanana belonged to the Begum. What does that admission mean? Not that, in respect to their being originally in the

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zanana, they were therefore the property of the Begum; but, the agreement concluded between them being that the Begum should retain the property in all the articles in the zanana of which she had then the possession. The only question that arose afterwards was upon certain goods which were claimed by his officer, as out of the zanana, and by her as being within it.

Terms of the agreement concluded between them.

Mr. Bristow's letter, in which he represents what the Wazir had said upon the subject, begins thus: it is in page 443—

Letter of Mr. Bristow respecting the treaty with the Begum.

"Respecting the treaty with the Begum, I had many letters from her complaining of its not being abided by."

Speaking of the Wazir, he says—

"He acknowledges her right to anything in trust with her own servants, but all other effects belong to him. I have hitherto been unable to satisy the Nabob or the Begum; but, as the treaty cannot be in force without the Begum pays the stipulated sum, I informed her of this circumstance, and shall advise her, in a letter I purpose writing to night, to complete her engagements with the Nabob."

Therefore the requisition of the Wazir, as well as that of Mr. Hastings, equally respected that treaty and the rights derived under that treaty, and not any original right or property in this treasure.

My Lords, after the execution of this treaty, the terms of which I shall by-and-by consider very shortly, the Begum continued in the quiet and undisturbed possession of these treasures. No further question was then mooted upon her right. However, extraordinary it is, that, though a treaty was formally executed with her by which her right to the treasures was impliedly, and certainly intentionally, confirmed, and though the letter of the treaty does not renounce all claims upon the treasures, yet—let me not for a moment be understood that it was not the intention of the Company to guarantee entirely the treaty and protect her from any claims of her son—but the kaulnama executed by Mr. Bristow only respects the territorial possessions, jagirs, ganjes, and other things, and guarantees the future enjoyment of them, but does not mention the treasure. However, it was notified to her by the Resident that the Company meant to guarantee to that extent; and therefore do not let me for a moment be supposed to contend that she was not to rely upon that guarantee, as long as she preserved good faith and amity towards us.

Guarantee of the Company.

But a member of that Board, it seems, forgot that there

15 FEB. 1793. was any treaty guaranteed to the Begum;—and had it been Mr. Hastings, should we not have heard of it? In the year 1779, Mr. Francis, who had signed this treaty as well as Mr. Hastings, Mr. Barwell, General Clavering and all of them, when a question came before the Board respecting a sum of ten lacs, which had been agreed by Suja-ud-Dowla to be given at the conclusion of the Rohilla war to his soldiers, when that claim was made upon his successor, Asoff-ud-Dowla, who was ill able to pay it, Mr. Francis suggested that that was a just claim lying upon the fund in the Begum's hand. Mr. Francis, in the year 1779, four years after the conclusion of this treaty, says:—

Proposal of Mr. Francis to enforce claims on the Begum in contravention of the terms of the treaty.

"I am of opinion that the amount of donation is not properly demandable from the Nabob, at least, not in the first instance. I think it should be demanded from the Begum who got possession of all the late Vizier's present property, [and particularly, I believe, of the wealth and effects taken in the Rohilla country. This was always my opinion; and I believe I have by me a minute to the same effect, which I intended to have recorded on the 29th of October, if the question for making the demand had then been carried. If I can find it I shall beg it may be entered in this place. The donation was promised to the army, as a compensation for their share of the plunder of certain places in the Rohilla country, which they were intitled to by the laws and practice of war. Suja Dowlah had the sole benefit of this compromise, as he appropriated and carried away with him the entire spoils of the conquered chiefs. If any booty was acquired it was by his own troops. It is also well known that the wealth of which he possessed himself by these means, or the most considerable part of it, was conveyed to Fyzabad and deposited in the palace now occupied by the Begum. This, in my opinion, is the fund which should be answerable in the first instance for the donation to the army, as their acceptance of the Nabob's promise in effect preserved the whole from plunder. No will or bequest of Suja Dowlah can give the Begum a right to the succession to his personal property without binding her at the same time to the acquittance of his debts. I think, therefore, that our Resident should be instructed to state the case to the Begum,] and demand the amount of the donation from her to be kept in deposit by us." *

It is very extraordinary that this should have been the sentiment of Mr. Francis, who, in the year 1775, had concurred with the majority that induced that resolution by which Mr. Bristow's treaty with the Begum was recognised, and the Wazir was cut off from all claim as to above three fourths of his treasure, in consideration of his receiving merely this sum of fifty-six lacs—certainly not a fourth of the treasures in the possession of his mother. Mr. Francis,

* Extract from a Consultation of the 9th of August, 1779.—Printed in the Appendix to the "Minutes of the Evidence," p. 1302.

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in 1779, is contending that, notwithstanding the solemn pledge of our faith, these treasures were still open to our claim, and [formed] a fund which was properly responsible for the discharge of our debt. But Mr. Hastings and Mr. Barwell would not go quite the length that gentleman was inclined to go. They recollected that the faith of the country was pledged by treaty. They thought that public faith was to be kept. They thought that, till she forfeited that condition upon which we had pledged to her our protection, this treasure ought to be preserved to her entire; and, therefore, Mr. Barwell immediately answers, intimating to him this treaty of 1775 and the solemn obligation of it, and that these treasures could not now be made amenable to that claim, although formerly they certainly were so subject.

Resisted by Mr. Hastings and Mr. Barwell.

At the conclusion of this treaty, though it was agreed that she was to pay fifty-six lacs, at last, worn out by the evasions which were continually put in his way, not willing to struggle with the difficulties she opposed to him, the Wazir actually abandoned four of his fifty-six lacs; so, in fact, he received but fifty-two for a surrender of all his claims and rights over treasures indispensably necessary to him, in order to pay the army that on account of their arrears were so mutinous, that, before his father's funeral, a British officer was ordered out—Major Gilpin, I think, has mentioned it at the bar—with four companies, to keep the city of Fyzabad, the residence of Suja-ud-Dowla, in quiet, on account of disturbances made by the troops for the arrears of their pay. He was obliged to dismiss a large part of his force, who refused to disband without their pay. He was obliged to draw up an account of the withholding of this treasure, and an engagement ensued between one part of his troops and another. This was the consequence of withholding the treasures from the rightful proprietor. Your Lordships will see how mischievously they were afterwards applied to our attempted and almost accomplished ruin.

The Wazir consents to take fifty-two lacs.

Having, as I trust, completely repelled all original claim to these treasures on the part of the Begum, I will now come to that right to them which she unquestionably had, under the treaty concluded on the 5th of October, 1775.

Right of the Begum under the treaty of October, 1775.

My Lords, the honourable Manager stated this treaty was executed under peculiar obligations of solemnity, both on the part of the Wazir and the English, inasmuch as the Wazir, at the conclusion, had attested the prophet and other objects of his religious adoration for the observance of these

15 Feb. 1793. articles. That gives an addition of solemnity, but does not give a further obligation to the performance of the treaty; that is, it abides the principal obligation. If he is released from the treaty, he is released from that oath. The same thing that discharges his obligation to fulfil it discharges his conscience. Therefore Vattel, a learned writer, says:—

"The oath to a treaty does not impose a new obligation; it only strengthens that imposed by the treaty; and it in everything follows the fate of that obligation; a real and superabundant obligation while the treaty is in force; but becomes null with the treaty itself." . . . . . "For the same reason, since the oath can impose no other obligation than that which results from the treaty itself, it gives no pre-eminence to one treaty to the prejudice of those that are not sworn to." *

I have already mentioned that the kaulnama, which was executed by Mr. Bristow, did not contain any release of the treasures, but, the Government having stated to her that they would think themselves bound to protect her, if any other demand or molestation were made her, and wishing to understand these words in the most large and beneficial sense, I do admit that under them she is completely protected, though the words do not extend to the treasures. Then it says afterwards, in the letter to Mr. Bristow:—

The guarantee of the Company dependent on her fulfilment of the treaty.

"When the Begum has completely fulfilled [the conditions of the coulnama, she will not be liable to further demands or trouble on account of money; and no one, agreeable to the terms of the coulnama, will in any manner obstruct or molest her.]" †

Therefore she certainly had the good faith of the Company pledged to her for her protection, as long as she performed the condition of that treaty.

After this treaty, there happened to be several differences between the Wazir and his mother. In the course of these differences, Mr. Bristow went up to Fyzabad, in the month of

Disapproval by the Board of Mr. Bristow's visit to Fyzabad.

July, 1776. The Board at Calcutta did not very much approve this unsolicited visit of his. They thought there was something suspicious in it, and they intimate to him—"By going to Fyzabad to visit the Begum you have exceeded our intentions." Whether the honourable Manager, who summed up this Article, thought this pressed upon Mr. Bristow, and he was resolved not to leave his hero in the lurch, he has produced two documents which, he says, show that the Board, upon inquiry, were satisfied Mr. Bristow was not to blame. Now, understanding it, as I do, that the thing

* Vattel, "Law of Nations," book ii. chap. xv. ss. 225, 227.

† Printed in the "Minutes of the Evidence," p. 451.

they blame was his visit to Fyzabad in July, 1776, any thing that they said on the 7th of February 1776, must be prophetic; it could not be an approbation of what he had then done. 15 FEB. 1793.

They say there:—

"It was not from any impression which the complaints contained in the Begum's letter had made upon our sentiments, that we took notice of that particular part which might be construed to relate to you?"

That letter certainly referred to something that had been transmitted, by way of complaint, in a letter of the 20th of December, 1775, from the Begum; and it declares, that upon receiving a letter from Mr. Bristow they were satisfied that the complaints mentioned in that letter were without foundation; but it could not apply to anything relative to his journey to Fyzabad in July, 1776, inasmuch as it was prior in point of time.

But the honourable Manager read another document, as testifying the approbation of the Board of the conduct of Mr. Bristow, which is in December, 1776, but which certainly neither relates to the letter of the 20th of December, 1775, and the complaint of the Begums contained in that letter, nor to the journey in the month of July, 1776, but is on a perfectly distinct subject; although the honourable Managers have chosen to read three lines of it, which certainly, upon looking at the context, apply to a subject totally different. The words are general approbation, and will apply to any subject. It is in the consultation, Fort William, 30th December, 1776:—

"The Board approve of Mr. Bristow's conduct on occasion of the difference between the Nabob and his mother."

That seems in terms pretty full approbation of the conduct of Mr. Bristow; and the honourable Managers wish you should refer that to something before imputed to him by the Begum, or an improper journey in the month of July, 1776, to the court of Fyzabad, and settling the valuation of old clothes, and other matters which they thought the dignity of the Resident a little blurred by having anything to do with. Then does the document of the 30th of December, 1776, allude to that? Let us look at the context, and it appears to relate to this, and this only. In the month of November there had been a difference between the Wazir and the Resident [Begum?]. Upon that occasion there had been a mutiny in the town of Fyzabad. The Begum had been obliged to give the sum of 86,000 rupees to the mutineers

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Difference between the Wazir and the Begum adjusted by Mr. Bristow.

to quiet them. This sum she afterwards demanded of her son, and it was afterwards paid her. She had put in the charge the [pay of] her own troops, at which the Wazir took offence. There being this difference between the mother and son in the month of November, 1776, Mr. Bristow sent Hosein Reza Khan, one of the Nawab's ministers, to her at Fyzabad, in order to settle the difference between them, and to soothe the mind of the Begum, that was irritated upon this occasion. That is the measure, and that only, to which these words of approbation are applied, as appears by looking at the whole of the document; and yet these three lines are taken out and read as an approbation of the conduct of Mr. Bristow, either on the 20th of December, 1775, or on his visit to Fyzabad on the 7th of July, 1776.

Now, I put it to your Lordships, is this a fair adduction of documents? Could the honourable Manager be mistaken in this? Does the honourable Manager allow very candidly for mistakes in others? Had this been one thing in a long series of correspondence for the thirteen years of this gentleman's government, would it not have been called a fabrication of a document?—a word the honourable Manager has fabricated for this trial—a fabrication of documents! a fabrication of letters! Would it not have been considered as an artificial excuse? Would it, with some mistakes of the same sort, have been spared to be called—for they have been called in the presence of this gentleman—the grossest and meanest lies? Your Lordships have seen the convulsive shock to which that gentleman first rendered himself, during so many years' patient sufferings, when that word was first applied to him. I do not mean that the honourable Manager who produced the document applied that expression; it was another honourable Manager*; but I say that, if Mr. Hastings had, in any part of his conduct, adduced a document so perfectly inapplicable to the thing meant to be proved by it, what are the names of reproach to which he would not be made liable—what the *cruciatûs carmina* he would not have heard upon that subject? I am claiming, therefore, a little allowance from your Lordships, if there should be a mistake in a date. I do not ask this excuse for anything which is essential, and could measure in solid veracity; but, if there is a mistake, is it fair that nothing is to be conceded on one side, and so much be exacted on the other?

* See the Speech of Mr. Adam, in Opening the Second Charge; vol. i., pp. 408, 409.

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The honourable Managers, at the conclusion of this head of the rights of the Begum, desired your Lordships to observe that these rights—speaking, I believe, of them as original rights, and not as rights under the treaty—had never been impeached by the Nawab or anybody else; on the contrary, the right to the jagirs and the treasures in the zanana had been particularly admitted and affirmed by Mr. Hastings. I defy the honourable Managers to produce a line—a word—a syllable—by which Mr. Hastings, from the first to the last, recognises the original right of the Begum to any particle of these treasures. And I will tell your Lordships why it is extremely improbable that he should have done so, or any of the members should have said anything about the original right to the treasures. The treaty was carried on between Mr. Bristow, the Begum and the Nawab, without giving notice to the Board that the treaty was pending; and it was not till the 16th of October, the day after the conclusion of the treaty, that they heard that it had been in agitation, and heard that it was concluded, and the terms upon which it was concluded. Therefore, there was nothing that called upon them to pronounce upon the original right. In fact, Mr. Hastings never did say a word, from the beginning to the end, in favour of the original right of the Begum; but whatever he did say of the right was of the right as he found it, under the guarantee of the Company, pledged by Mr. Bristow.

Non-admission by Mr. Hastings of the Begum's right to the treasure.

It is said, the Wazir admitted it. My Lords, he never did. Nay, the Begum admits the contrary. The treaty of the 15th of October, 1775, expressly says—"I have taken of the patrimony of my father." Is not that admitting the original right of the father? It could not have been the patrimony of the father if it had been the gift of the father to the mother, so long ago as 1764, or at any period prior to his death. Therefore they all agree that it was the property of the father, which the son, out of delicacy to his mother, took a part of, rather than enforce the payment of the whole.

Statement of the Begum.

I wish the honourable Manager would have stated that after this treaty was executed Mr. Hastings had, in any instance whatever, endeavoured to impugn the full effective rights of the Begum under the treaty. Till the moment the Begums are detected in acting hostilely to the English nation, in every instance in which the discussion of the rights under these treaties came before the Board, he was

Mr. Hastings supports the right of the Begum under the treaty.

15 FEB. 1793. her constant advocate and friend with reference to that treaty. Whether Suja-ud-Dowla did, as she has asserted, upon his death-bed, recommend her to the charge of Mr. Hastings or not, Mr. Hastings acted as if he had been present and had accepted the charge; and, in every instance whatever, down to the year 1781, the period of the disturbances of Cheyt Sing, when she broke out into flagrant acts of hostility against the British nation, he protected, encouraged and supported, her against every claim that was made in derogation of her rights.

Instances adduced.

My Lords, there was, in the year 1780, an attempt made on the part of the Wazir, or, rather, on the part of our Resident, who wished to have obtained satisfaction for our debt, to obtain tankhwahs, to be granted upon these jagirs of the Begums. The moment the name of them, or of the elder Begum who had no guarantee from Mr. Hastings, was suggested, instantly, upon the first suggestion of the subject, Mr. Hastings gave them the fullest immunity and protection.

The honourable Managers have endeavoured to impress your Lordships as if there had been an indisposition on the part of Mr. Hastings to acknowledge to the fullest extent the rights of the Begum under treaty, or to give them their fullest effect. Do they show any instance where he was adverse to her interests, or even indifferent respecting them, and respecting the full enjoyment of all rights and claims under this treaty, prior to the forfeiture of protection under it?

In the year 1773, when an application was made by Mr. Hastings to Mr. Middleton, who had, without authority from Mr. Hastings, given, as far as he could give, a guarantee on the part of the English nation and in their name—not only without the authority of Mr. Hastings, but against, as I will show your Lordships, his express prohibition—at that time, Mr. Hastings, writing up to Mr. Middleton, says:—

"The grievances"—for the Bow Begum had complained of certain injuries at that time—"come before us under a different footing from the elder Begum. She has a protection from the guarantee referring to it, and says it would be a reproach to their name if she had not the full protection of it."

Therefore, so long as she had a claim under that guarantee and a claim upon the British nation, I pledge myself to prove that Mr. Hastings preserved his own faith and the faith of the British nation to this lady perfectly entire.

Much of your Lordships' time has been occupied by a

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Refusal of Mr. Hastings to confirm the proposed guarantee.

subject not very important, that is, the subject of the elder Begum's supposed guarantee; and I do not know why the honourable Managers made such an extraordinary point and effort in order to falsify this allegation in the Defence of Mr. Hastings. It is, I think, almost the only one allegation in our answer and defence at this bar that they have pressed their strength against, to endeavour to show it to be false. And I trust it will be found that they made that effort in vain; for I submit that, upon the evidence before your Lordships, nothing can be clearer [than] that, though Mr. Middleton had been, at the request of the elder Begum, mediating between the mother and the son, and had carried treaties to a certain extent, and had even made propositions—for it seems to me, upon the evidence, clear, that one of the treaties was merely propositions, and that other propositions differing in substance from them were afterwards the treaty agreed to between the mother and son—yet, when Mr. Middleton notifies this treaty to Mr. Hastings, in a letter of the 27th of January, 1778, Mr. Hastings, by a letter of the 23rd of March, expressly refuses that guarantee, but says, that the rights of the younger Begum who had been making complaints were certainly protected by a guarantee. To that he refers, and the obligation and effect of that he clearly recognises.

I say that this is of very little importance, and I wonder how so much time should have been spent upon the subject, unless it was in order to drive us, who framed that defence, who are responsible for its truth and will not shrink from that responsibility, to avow that every word therein stated was stated upon a full examination of the documents and the firmest belief of their truth—that there is not to be found, in all the proceedings before your Lordships, and all the evidence that will be produced, anything to show that Mr. Hastings did authorise that guarantee.

Statement of the Manager respecting the alleged guarantee.

But one of the honourable Managers has expressly alleged that Mr. Hastings did authorise it to be given, and withheld that document which was to communicate his authority from the Board; and your Lordships will find it so stated upon the face of your proceedings. He ventures to allege that Mr. Hastings had authorised Mr. Middleton to pledge the guarantee of the Company, but had withheld [his proceeding] from the Board. Upon what pretence is that said? Is there a document to warrant it? In the absence of documents nobody could know it but the witness. Had the witness said nothing

15 Feb. 1793. about it? No! the witness had not been silent, for he had been twice asked. He was asked it in the page before that in which the honourable Manager hazarded that allegation. Mr. Middleton expressly denied that he had ever the authority of Mr. Hastings to agree to that guarantee and to pledge his faith. The honourable Manager had heard him deny it before he had made that allegation. He asked him the fact after he had made the allegation. Again there is the same answer; for twice does he deny that he had any authority whatever to pledge the Company's faith to the treaty with the elder Begum. Therefore, that assertion is hazarded between two positive denials by the only person who could know any thing upon the subject!

Refuted by Mr. Middleton.

Consultation of the Board, June, 1780.

But much is relied upon—that, on the 22nd of June, 1780, at a consultation of the Board, it does appear that those treaties had been transmitted at that time, upon an occasion which I have in part alluded to already, and that the Board thereby became possessed of them—that Mr. Hastings recognised the pledge in the second instance, but did not give it in the first, which has effectually bound him.

Imposition of tankhwahs on the jagirs of the Wazir's relations.

Now, do in fairness let us see what that transaction is. About June, 1780, Mr. Purling, being then Resident at Oude, being desirous of getting further assignments to pay the large arrear of debt due to the Company, was desirous of obtaining tankhwahs to that amount; and, therefore, presuming the debt amounted to one kror and thirty-six lacs, having assignments before for only one kror and six lacs, and, in order to procure assignments to that amount, it was necessary to include the jagir lands of the Wazir's relations—his mother, and other persons whose names are mentioned in that list which your Lordships will find in your Appendix, page 31. There are four very closely written pages of the names of the jagirdars—the time when granted—the amount of each place—the jama and several other particulars; and in the margin are written certain claims of exemption from those tankhwahs, which were generally given over all the lands of the Wazir, in respect of certain peculiar grants of the Wazir, and the grantees wished to be exempted from this general taxation. Munny Begum, or the mother of the Nawab Suja-ud-Dowla, possesses two engagements; one of the Nawab Asoff-ud-Dowla, the other of Mr. Middleton;—

Exemption claimed by Munny Begum.

"That the jagheers shall remain to her unmolested; [and declare

that nothing but absolute force shall make her give up any part of the jumma, since some of the terms of her engagements are] uncomplied with." 15 FEB. 1793.

Now, what do the Board do? If the Board had after that insisted upon that tankhwah that was given upon the elder Begum's jagir, among the rest, being continued, or had taken any measure respecting her jagir, it would have behoved them nicely and accurately to have examined her rights under that supposed treaty and supposed guarantee. But, the moment the Board saw that there were any claims of exemption to which claims of exemption the Wazir was himself favourable, and which were preferred on the part of his family, they at once, and without any further consideration, direct that all these tankhwahs upon all these jagirs should be withdrawn—that these jagirs should be enjoyed by these private jagirdars, unmolested by them. There were the jagirs of Zalim Sing and others, to whom there was no pretence that we had given any guarantee.

Withdrawal of all the tankhwahs.

Having so decided on it, it behoved Mr. Hastings to look into this kaulnama, to see all the articles of which it consisted, with a view to that which the honourable Managers say he was guilty of, namely, in not providing for the women of the Khourd Mahal, for which purpose they have so much pressed the supposed guarantee of the elder Begum. Now it is not enough, in public treaties, to bind me by a recognition—to say, because a thing is transmitted to me, that I recognise every thing in it to be true. According to Grotius, something more than mere silence is necessary, to wit, some acts which show approbation and consent.*

Acts of consent essential to the recognition of a treaty.

As to those who claim the guarantee of the Company, and as to those who do not, all the private jagirdars are at once released from that claim and that burden that was thrown upon them by the Resident, who had taken tankhwahs upon them. Therefore there stands, as I conceive, no pretence for an original pledge of the Company. The only person privy to that transaction expressly disclaims any authority. It does not rest upon that: we produce the letter which forbids the pledge of that guarantee, the letter of the 23d of March; and though Mr. Middleton might afterwards pledge it, it might have been an improper conduct

* "For silence alone is not enough to prove a consent, without some thing or deed, which probably would not have been if that agreement had not been approved of."—Grotius, "Of the Rights of War and Peace," book ii., chap. xv. sec. 17.

15 FEB. 1793. in Mr. [Middleton]. The honourable Managers should have charged it in another way. They should have charged it—although Mr. Middleton had without authority pledged the Company's faith, yet that the Board did not punish him. There were at the Board Mr. Francis and other gentlemen, who equally knew whether he had been guilty of this breach of duty, and who did not bring forward any motion against Mr. Middleton any more than Mr. Hastings. But I acquit Mr. Francis as well as Mr. Hastings upon the subject, because their attention was drawn to nothing but the claim of exemption by the Wazir's grant, and everybody who had the grant of that exemption had that claim allowed.

Responsibility of Mr. Middleton with respect to the guarantee.

Object of the Manager in imputing the guarantee to Mr. Hastings.

Now, the use made of this letter, on the part of the Managers, is to involve Mr. Hastings with his guarantee, not only to prove that we had rashly asserted—what I solemnly pledge myself to be true—that he gave no authority for the guarantee. And the honourable Managers were not sparing of expressions, saying that, when he was got out of the rash guidance of others, they were in hopes we should have been more guarded than to have pledged his name to that which was rash. The only substantial reason, except that little reason of an occasional triumph, is to fix Mr. Hastings with an obligation to see to the discharge of the tankhwahs of the small Mahals, stipulated in the treaty to be granted for the maintenance of the women of the Khourd Mahal.

Treaty of October, 1778, guaranteed by Mr. Hastings,

Good God! if the honourable Manager would have looked to one treaty unquestionably guaranteed by Mr. Hastings—a later treaty than that of 1775, the treaty of the 3d of October, 1778—if the honourable Manager will have the goodness to refer to that, he will find that it contains every thing, in substance, which is contained in that treaty for which he was contending so unnecessarily, and wasting so much of your Lordships' time in so contending. He will find that every obligation upon that subject which could have been imposed by that treaty fully guaranteed is imposed by Mr. Hastings; and the obligation is this:—Mr. Hastings wrote a letter, on the 29th of March, 1779, in answer to a letter of the Begum, desiring his confirmation of a treaty entered into by Mr. Middleton with her, in which Mr. Hastings has guaranteed that the Wazir shall discharge the tankhwahs of the small Mahal. He gave his full authority to that; and therefore, as long as that treaty remained in force between us, upon the application of the younger Begum complaining of the infraction of that treaty by the Wazir in

provides for the maintenance of the Khourd Mahal.

not discharging the tankhwahs of the small Mahals, [he would have been bound to interfere]. Which tankhwahs seem by the terms of the treaty to have been previously granted; for when I covenant that a person shall discharge the tankhwahs, it implies that they have been previously settled, and that we know what we are treating about. I engage he shall pay a particular sum—discharge himself from a particular security. Therefore, I assume that, on the 3d of October, 1778, when that covenant was drawn up, and still more on the 29th of March, 1779, when Mr. Hastings by his letter confirms it, these tankhwahs had been signed; and that, prior to the forfeiture of the guarantee, Mr. Hastings was then bound in good faith, if the Begum had written to Mr. Hastings, had stated that the Wazir was negligent, or his agent negligent, in paying the sum granted for the maintenance of the Khourd Mahal—if she had so complained, and notified to him the infraction of the covenant on the part of the Wazir, he, in point of good faith, would have been obliged to see that that sum was paid. That I admit in its full extent. And all that they could have got by the guarantee to the elder Begum is granted to them by the treaty of the 3d of October, 1778, as long as the treaty was in force—that is, prior to the acts of rebellion on the part of the Begums. 15 Feb. 1793.

Was there ever a complaint to Mr. Hastings that a penny was unpaid? Did there exist a ground of complaint? They [would] have disclosed by their evidence that there existed a ground of complaint, if they had made it, up to the time of their positive acts of rebellion—up to September 1781. Even if Mr. Hastings had entered in to this guarantee with the elder Begum, he performed the terms of it, as long as she had a claim to the performance of any terms. Under that guarantee, when it was in force, the Begum ought to apply to Mr. Hastings to perform it; for a guarantee, according to the law of nations, is liable only in the second instance. Vattel says:— No complaint previous to the distresses in 1781.

"It does not authorise the guarantee to interfere in the execution of the treaty, or to press the observance of it of himself and without being required."*

Therefore, supposing these women had endured any grievances while the treaty was in force, it would have become

* Vattel, "The Law of Nations," book ii., chap. 16., sec. 236.

15 FEB. 1793. them to have applied to the Begum. The Begum should have remonstrated with the Wazir, and insisted upon the performance of the same to their maintenance; upon his refusing, she should have applied over to us. It does not appear that any application, in any instance, had been made to the Wazir for the distresses that happened subsequent to the forfeiture of the treaty, in the month of September 1781; and still less does it appear, from the beginning of time to this hour, that there was ever an application to the English nation on account of these distresses, except that Major Gilpin, being stationed at the place in the month of October 1782, and Captain Jacques somewhat earlier, when there were distresses, did what?—did that which wherever there is distress an English officer will do. He does not consider whether he is under any legal obligation to do it; he finds the command of his Creator written upon his heart. There is distress, he has the means of relieving it, and he relieves it, with the humanity that does him honour. The moment he hears of the cry and distress of these people, knowing that it was on account of the neglect of Lataffut Ali Khan, he instantly advances the money. He produces at your Lordships' bar the receipts from Lataffut Ali Khan for 10,000 rupees; he having paid that sum first. He applied afterwards to Lataffut Ali Khan, and was paid by him, on the score of the Wazir, the money he had advanced.

Major Gilpin succours the women of the Khourd Mahal.

But Major Gilpin has told your Lordships, he did not do it because he conceived himself under any obligation; and he proved that none did attach upon him, any more than would attach upon any living man who had the means of relieving distress. Therefore, there is no proof of a guarantee on the part of the elder Begum. There is none upon the younger, to at all call in question the observance of good faith on the part of the English nation in Mr. Hastings; for there were no distresses before the infraction of the treaty on their part, and none do appear. The distresses were at the utmost extent afterwards, and yet no application was made to Mr. Hastings to perform the guarantee of the Company; and the officers themselves declare they considered it as matter perfectly voluntary in them, and that the Wazir, so far from thanking us for that voluntary act of interference on the part of Major Gilpin, notified his displeasure for that interference in his domestic concerns. Therefore, it stands upon the foot of the guarantee totally without all colour or pretence to charge Mr. Hastings

with an obligation, in respect of that, to do more than to see, upon an application from the Begum, that the sum appropriated to the maintenance of the women was duly discharged. But no such application ever was made, from the first formation of these treaties to the present moment, in which I have the honour to address your Lordships. **15 Feb. 1793.**

Honourable observance of the treaties by Mr. Hastings.

My Lords, having done then with the terms of the treaties with the younger Begum, that which was executed under the authority of Mr. Bristow, confirmed by the Board on the 15th of October, 1775, and that latter treaty entered into with her on the 3rd of October, 1778, confirmed by Mr. Hastings on the 26th of January, 1779, and observed, as that and every other treaty with her was, most faithfully and honourably and unequivocally, in every particular, as long as she was intitled to claim the performance of a treaty on the part of the British nation—I shall now proceed to those other parts of the Charge which consider the object of Mr. Hastings' journey to the upper provinces, in the month of July, 1781, and the events which followed soon after that period, and which laid the foundation for the just resumption of the protection which the English nation had before afforded to the Begums, which laid the foundation of the Wazir's just resort to the treasures which had been before improperly withheld from him, and which warranted all the coercive measures that are the immediate subject of the latter part of this Charge.

Charge relating to Mr. Hastings' visit to the upper provinces.

Delegation of power from the Council.

The honourable Managers have thought it necessary to state, that Mr. Hastings went up in the year 1781, under an illegal delegation. Your Lordships will recollect that the Council was then reduced to Mr. Wheler and himself. The delegation was a delegation made by them both in Council. Of course, therefore, if the authority was capable of delegation, there was an authority competent to make and to confirm that delegation. But, as to this subject of the legality of the delegation, as it stands upon the practice of the Company, from all time down to the time of Lord Cornwallis, and practised without reprobation, I should think myself blamable if I travelled at length again into that subject, after it has been so fully discussed upon the former Charge, in which it made a substantive allegation, as it does here, and was, as it were, conceived by the honourable Managers a material ingredient. I will only just recall to your Lordships' recollection that we have already given in evidence that Mr. Vansittart, under a similar delegation—that Lord Clive, under a similar delegation—that Mr. Hastings in 1773, when he executed

15 Feb. 1793. the treaty of Benares, approved and confirmed by the Company—went under a similar delegation; and, therefore, having nothing upon the records of the Company that should intimate to him that that power was not capable of being conferred by delegation, he again, in 1781, for the same necessary purposes which had induced a delegation in the former period, accepted of a delegation to the country of Oude. Since that time, he has been delegated once more, in 1784, to the province of Oude. Lord Cornwallis, in the year 1787, in discharge of very important objects and trusts, went himself to Oude. In the year 1790, I think, he went to the coast under a delegation, taking upon himself the command of all the armies of this country; and the power of peace and war was properly and wisely entrusted to him. He took it under delegation in the very terms of it. I have recited it formerly to your Lordships. It is almost word for word and letter for letter the same as that Mr. Hastings went under. And Parliament has since confirmed that delegation, not declaring either its legality or illegality; but as there had been thrown out doubt upon the legality of such a delegation by the Articles presented by the House of Commons, it was thought a matter of public safety, and wisely they did so think, that an Act of Parliament should pass to confirm the acts done under that delegation. The Act is the 31 Geo. III., cap. 35. It is upon the printed Evidence, page 1556.

Delegation of Lord Cornwallis confirmed by act of Parliament.

I should think it inexcusable if I wasted any time upon this subject, and if I did not think that one complete demonstration was fully sufficient. I will, before I quit it, only mention how very harshly [it has been]—and as it seems to me, according to the ideas one has upon the subject, unfairly—urged that he went up, notwithstanding the practice of the Company and their orders. Notwithstanding their order, in 1701, was, that all their Council should reside upon the spot, a contrary practice had, with the full knowledge of the Company, subsisted. Afterwards an order restoring the old practice was made. That order was very effectually rescinded; and, for twenty or thirty years last past, the order rescinding that which had restored the old practice had been acted upon; and there did not remain, in the mind of any servant of the Company, an idea that there was any subsisting order requiring the actual presence at Calcutta of all the members of the Council.

Orders of the Company as to the residence of members of the Council.

Having, therefore, done with this illegal delegation, and referring your Lordships upon that subject principally to the

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evidence that has been laid before you, the next topic in the Article is the recall of Mr. Bristow from Oude. The appointment of the Resident at that court seems to have been a subject of contention with Mr. Hastings and the Directors, and, I think, flagrantly, improperly, on the part of the Directors, from 1774 to 1780, when Mr. Bristow was sent up by the authority of the Board in consequence of a letter from home.

Charge respecting the recall of Mr. Bristow.

As soon as Mr. Hastings was joined by the Council sent out to him from England, the first measure that they chose to adopt was, to insist upon the production by Mr. Middleton of all his correspondence whatever with the Governor General. Mr. Hastings said:—

Demand by the Council of Mr. Middeton's correspondence with Mr. Hastings.

"I will produce you all his political correspondence. If there should be any thing which shall show that you have not sufficient information before you, the whole of what is necessary to give you that information shall be produced."

They insisted upon the production of the whole; and upon the non-production they thought fit to dismiss Mr. Middleton. They claimed, as a right of the majority of the Board—and it was in strictness the right of a majority—to appoint their own Resident at the court of any Prince with whom we were in connection so as to send Ministers. They accordingly sent Mr. Bristow. In the year 1776, Mr. Hastings and his friends—those who immediately acted with him—had become possessed of the effective majority in the Council of Bengal. If it was right, in 1774, that the majority should appoint their Resident, I shall be glad to know why it was not equally right, in 1776, that the then subsisting majority of that Council should appoint their Resident. They accordingly did appoint their Resident; and they returned Mr. Middleton to the post from which he had been removed by the other majority towards the close of the year 1774.

They dismiss Mr. Middleton, and appoint Mr. Bristow in his place.

Mr. Hastings, recovering a majority, re-appoints Mr. Middleton.

Mr. Bristow went home to Europe; and, it seems, he complained to the Directors, who thought fit to reinstate him upon that complaint; and they sent out a letter, by which they directed that Mr. Bristow should be restored to his appointment. Mr. Bristow seems to have arrived about the month of February, 1780. He applies, as he states himself, in a letter of the 1st of May, 1780—which is upon your Lordships' Minutes—to the Board, in which he states himself to have made individual application to every member of that Board for that restoration, and claiming the benefit of the Company's order in his favour.

The Directors order the re-instatement of Mr. Bristow.

Now, why is it made peculiar matter of charge against

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Delay in complying with the order charged against Mr. Hastings.

Mr. Hastings, that he had not brought forward the matter and reinstated him? He states he applied to Mr. Francis after his arrival. He states his application to him along with the rest of the members, in the month of May, 1780, in that letter which he then writes. He remains unappointed till October following. Therefore, it seems to me that the matter presses as much upon Mr. Francis for his non-appointment in the meantime as it does upon Mr. Hastings. But at what period does Mr. Francis choose to move his re-appointment? I am sure your Lordships recollect sufficiently the history of that country, and of the parts of it we have had occasion to detail in the course of this trial—that the month of October, 1780, was, perhaps, one of the most calamitous periods that occur in our Asiatic history. It was just at that period when the force under Colonel Baillie and Sir Robert Fletcher had been cut to pieces on the coast; at the time when such a slaughter had taken place in the Carnatic; when every resident at Madras considered the extinction of the settlement likely to follow the extinction of all their friends that were cut off in the field, and put on mourning universally. There was a consternation that affected every member of the British Government, but the most essential member, who, undismayed in the midst of these perils, sustained the sinking state!

Innopportune period selected by Mr. Francis for moving the re-instatement of Mr. Bristow.

At that moment, when every countenance ought to have been given to the first executive magistrate; when every kind of authority with which he could have been invested ought to have been heaped upon him by their concurrent labour; when they ought to have forgotten every animosity that had existed before; when they ought to have recollected that there was at that moment the entire strength of Hyder Ali, the vigour of Tippoo Saib in his youth, anxious to follow the course of military glory that his father had chalked out for him; at that crisis, when there was despair in almost the very Presidency of Bengal, despair every where but in the immediate circle that encompassed that gentleman—at that moment, Mr. Francis chooses to divest him of that opportunity of showing his ascendancy in the Council of Bengal to the nations of India, and to which a value was attached only because it had been a constant subject of contention.

My Lords, it was most material that the treaties then going on with the Berar Raja—and your Lordships will recollect that at that period 30,000 horse of that chief were hanging upon the borders of Bengal, ready to burst in, and only suspended by the negotiations Mr. Hastings was

carrying on with the minister of that prince—at that moment, when it was necessary that every man that loved his country should strengthen and invigorate its arms with all the power he could—at that moment it was thought proper, after waiting from the month of February to the month of October, at that perilous, disastrous, period, to force on this measure, and to order that Mr. Bristow should depart for his Residentship at Oude. 15 FEB. 1793

Sir Eyre Coote was embarrassed by the orders of the Directors; for the safety of the country was in contradiction to their orders. Mr. Hastings said boldly, like a man, upon that occasion,—"Put yourselves in the place of the Company; suppose them here knowing of these disasters; ask them if they would at this moment strip me of the necessary authority of my situation. Would they let a man that may be supposed to have the necessary authority of my countenance be recalled, and have a man forced upon me to go up as my representative? What would the Company have said with that means of knowledge? They would have said, 'you shall have all the countenance we can lend you, all the authority which we can invest you with; the person that has your confidence shall be sent accredited with every kind of power.'" At that moment, it was thought proper by Mr. Francis [to urge his motion]; and Sir Eyre Coote, too, feeling himself obliged under a former pledge, having said he would vote for it, did vote for it. But they thought it necessary to restore the credit of Mr. Hastings, as much as they could, by defeating the credit of this appointment; and, therefore, they sent up Mr. Middleton with him, not with the charge of the political concerns, but of every concern with respect to the payment of the brigade, and every other military connection between the Company and the Wazir. Things standing thus, Mr. Bristow still continued, from the month of October, 1780, when he was thus improperly appointed, till the month of May, 1781, when Mr. Hastings, for public purposes detailed in his minute—and all of which public purposes he detailed, as you find, and his measures in the course of that journey—thought that a person should not be left there known to be a person to whom his favour and patronage did not attach; receiving, as he did, at that time, the representation of the conduct of Mr. Bristow from the Wazir, of the manner in which he had behaved to that prince. For he had behaved, in respect to that prince, with whom that embassy was to be discharged, in a manner

Opinion of Mr. Hastings.

Conduct of Sir Eyre Coote.

Mr. Middleton is associated with Mr. Bristow.

15 Feb. 1793. extremely insulting and disrespectful, and which made it extremely improper, if on that account only, that Mr. Bristow should have been appointed, or should be continued. For the Wazir states, that he was for ever telling him that orders would come from Europe which would fix him there for ever, and effect the removal of Mr. Hastings, and affect him, then, with the consequences of his displeasure for the little countenance he had shown him.

Subsequent removal of Mr. Bristow by Mr. Hastings.

Mr. Hastings, upon that representation, and wishing to have a person in whom he could place a great degree of confidence, and who might be supposed to appear as the object of his patronage, and give a greater effect to the measures then about to be pursued, removed Mr. Bristow, and Mr. Middleton was left in possession of the full power of Resident.

Mr. Middleton invested with no extraordinary powers.

It is stated in the Article—why I know not—that he invested Mr. Middleton with extraordinary powers. The honourable Managers have not shown any one power at that time conferred upon Mr. Middleton, which had not at all times belonged to the office of Resident. They have not shown, in a single instance, any one thing that he was authorised to do, that Mr. Bristow, his immediate predecessor, had not been authorised to do. And indeed there does not appear to have been any formal appointment of Mr. Middleton made at that time, but that, upon Mr. Bristow's being called away, he was left in the full and unparticipated enjoyment of the functions and authorities before exercised by the Resident at that Court. Therefore that allegation of extraordinary power is as perfectly unfounded as many other of the allegations which I have taken the liberty to observe upon.

My Lords, it is stated that, by this appointment of Mr. Middleton, Mr. Hastings contracted an extraordinary degree of responsibility for the measures of Oude. From the fair degree of responsibility that attaches upon his character as Governor General, that attaches upon him in respect to the appointment of Mr. Middleton at that period, I have no desire to withdraw Mr. Hastings. From the fair, natural, or necessary consequences of that appointment, and of any measures to which he was privy in act or counsel, I do not, standing here as his Counsel, wish to withdraw him. But I must protest against that extravagant degree of responsibility which the honourable Managers have thought fit to lay upon him; under which no man living, if there is such a responsibility attaching to such a situation, could safely exercise such a situation. He is charged, not only

with all he did, but for what, with the fullest exertion of mind and fullest information upon the subject, he could have procured to be done by the full stretch and exertion of his influence over the Wazir, to a greater degree than that to which his influence ever extended.

They charge him for the neglect of the interior police of the country of that prince; they charge him for the defect in the clothing of his army. Good God! is our Governor General to go through the detail of the army clothing? Why, here is Mulavy Mowban appointed a judge in one of the courts. There Mr. Hastings laboured with great industry to obtain the introduction of a well-regulated police into that country, as he had introduced it into Benares; and a more regular form of police cannot be read of or suggested than is contained in your evidence upon that subject. And he, as well as [he] gave them the best laws, gave them the best judges to execute them. He endeavoured to introduce the same into Oude, but could not effect it. Whether it was the leaning to oppressions which the fair introduction of law might have put an end to—but everybody resisted the introduction of law; everybody resisted everything like police or good government being brought among them.

Endeavour of Mr. Hastings to reform the police of Oude.

Some of the examination has been directed to know whether Mulavy Mowban has been to blame, or Mr. Hastings, because he had not a good palanquin to go to his court of justice in or a good room to sit in. Is not this pushing responsibility much too far? He was to see that there was a good police; that the armies were well clothed everywhere; that the magistrate had a good palanquin to go in and a good court to sit in. All this is to be added to the administration of a whole empire then resting upon his shoulders!

Frivolous charges against Mr. Hastings.

In order to give your Lordships a sample of the responsibility attached upon him, they complain that he did not see that the Wazir made a proper allowance to his brother. But that is not enough! He is to see that, if any of the brothers meet with an accident, he is to have a surgeon, and that that surgeon is paid liberally! The seventeenth Article goes beyond what I am stating; I will read the very words, to prevent any cavil upon that subject. It complains of Mr. Hastings, because the Wazir having a brother—

> "Who had been wounded by an assassin, who had also murdered his aunt in the very capital of Oude"—

but wounded by an assassin who had killed his aunt—it is

5 FEB. 1793. the consummation of all human wickedness not to provide a surgeon!—

"The said Nabob Behadre had not a daum to pay the surgeon, who attended him for the love of God alone."

Now this is one species of responsibility to which Mr. Hastings' functions and duty are supposed to extend. Therefore, laying out of the case these over-strained claims of responsibility, I have admitted and do admit him still to be liable to the full and fair extent to which the consequences of any given act extended—and no further.

Mr. Hastings' motives for his journey treated as pretences.

Mr. Hastings went up the country in pursuance of the objects stated in these minutes, and which the honourable Managers have chosen to say were pretended objects. Why they should be pretended I know not, any more than [when] in the first Article, they talked of the pretence of a war; which war raged to the cost of this nation, and the ruin almost of our settlements in India, unless they had been sustained by Mr. Hastings. But, when the best intelligence he could derive called upon him for vigorous executive measures, the best information he could receive—information conveyed to him from his Majesty's Ambassador—intelligence conveyed to him over land of the actual commencement of hostilities—that is stated to be a pretence for doing that, which if he had not done, another sort of charge would have been made against him and speedier execution done upon him!

Reasons for his journey assigned by Mr. Hastings.

The reasons assigned by Mr. Hastings for his journey were, the better settling the country of Oude, which was disordered from various causes; where there was a subsidy which was undischarged, and which it was most material to obtain the payment of, and a debt that had swollen to an enormous magnitude. Another object was, to obtain the payment of the debt of Cheyt Sing. Another object was, to detach the Berar Raja from the confederacy against us and fix him firmly in our interests: to meet at Benares Bissumber Pundit and Beneram Pundit. Beneram Pundit Mr. Hastings actually did meet there; the other person he was to have met died two days before he got there. Why are these pretended objects? You see the merits of [Bissumber] Pundit and Beneram Pundit in the Benares Narrative. Their merits were so considerable during the period of the disturbances that you have, by Mr. Hastings' authority, sanctioned afterwards and approved by the Company, continued to them, if alive, the pension for the very services [rendered] upon that occasion.

But who were they? They were the confidential ministers of the Raja of Berar, whom it was most material for us at that moment to detach from the general Mahratta confederacy, and whom Mr. Hastings had the merit of detaching, in the manner I have stated some time ago to your Lordships; and, by that excellent measure, he had the good fortune to save Bengal from that ravage and waste and spoil which would have been the inevitable consequence of the irruption of 30,000 horse, then hanging upon our border. These were the objects; and they are the objects to which he addressed his attention. So far as to these being pretended, I wish the honourable Manager would state anything else to which he adverted, if this did not alone engross the whole of his attention, at the period when he entered on that journey, which is stated with the objects of it in the minute of the 21st of May, and, I think, afterwards in July, 1781.

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Important object of his interview with Beneram Pundit.

We then come to the treaty of Chunar. And the treaty of Chunar, which was entered into at the instance of the Wazir, your Lordships observe, authorises the resumption of the jagirs generally, with a stipulation only in favour of those for whom the Company were guarantees; and those persons for whom the Company were guarantees were to be paid the net amount of their jagirs through the Resident.

Treaty of Chunar.

Now, it is material to know what was the nature of that particular estate called a jagir. Your Lordships have heard already, from Mr. Purling and from Mr. Middleton, that they are in their nature resumable; that the only grant not resumable is a grant under the imperial confirmation at Delhi, called an altamgha, which is a species of inheritable property; but a jagir is nothing more than an assignment of a portion of land for military service, of which the jagirdar is himself the collector.

Description of a jagir:

All rank in the Mogul empire was derived from military command, and was proportioned to the extent of the mansab, that is, the grant which specifies the number of horse any given officer was to command; and in proportion to the rank and number of horse he was to command was the assigned provision for these horse, or the jagir of land. I think the number 7,000 was the highest military command. Proportioned, however, to the different ranks were the different assignments of this landed provision.

But so far are they from being irrevocable that it is the

15 FEB. 1793. practice either to increase or diminish them according to the merits or demerits of the mansab; and there are instances of both—not only to increase or diminish, but to change the land upon which the jagir was from one province to another. Jaffier Khan at one time changed all the jagirs in the province of Bengal to Orissa. There are many in a treatise which I have had occasion to mention to your Lordships before, which contains a narrative of transactions in Bengal, written by a native and translated by Mr. Gladwin, in the reigns of Azim Shah, Jaffier Khan, and others. It is an invaluable treatise in point of authenticity. He states several instances of the resumption of grants of these jagirs, and varying the amount of them. He states that, in Jaffier Khan's time, the diwan had represented—

Variable and resumable in its nature.

"The advantages that would accrue to the Crown from transferring [the jagyeers of the Munsebdars from this Soobah to Orissa, where the lands were of less value, and the collections made with greater expence and difficulty. The Emperor having approved of this proposal, the Dewan immediately resumed all the jageers in Bengal, excepting what were properly annexed to the Dewanny: and in lieu thereof gave assignments upon Orissa, the cultivation of which province had of late been very much neglected. The Dewan took the collections entirely into his own hands, and by preventing the embezzlements of the zemindars and jageerdars], annually augmented the revenue." *

He states the great savings that were made by the resumption of the jagirs.

It is incidentally mentioned in the history, as the custom of the empire, to resume, at the pleasure of the prince of the country, any jagir he had granted to a particular officer; that it purely depended upon his holding that particular military command which it is in the power of the sovereign to determine, when he pleased, and of course to resume the grant made for that object. And the resumable nature of the jagir is established by a very accurate and extremely elaborate performance in a report of Sir John Shore, fortunately for this country, now Governor General of Bengal. He was desired to make a report upon that subject by Lord Cornwallis, in 1788 or 1787; and he made an extremely learned one. He states unequivocally that a jagir is revocable by the prince, just as any military command to which it is annexed, or [he may] turn it into a money payment at pleasure.

* "A Narrative of the Transactions in Bengal," &c. "Translated from the original Persian by Francis Gladwin."—Calcutta; 8vo., 1788; p. 32.

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It will be proved beyond all doubt by the evidence we shall produce, that every prince in India has as absolute a power to resume them as he has to grant them. Then, in the year 1781, the Wazir having experienced [the mischief of this tenure], and connected with him as we were, in respect to the large sums we were annually to receive for our brigade furnished for his assistance, and having an interest in the payment of an enormous debt contracted on that account, we wished to redress, and at his instance readily lent ourselves to his assistance to correct, a grievance arising from the independent authority of these jagirdars. For these jagirdars had the land granted only for a nominal amount —say 10,000 or 12,000 rupees—and the excess beyond that sum ought to be accounted for, but I believe hardly ever was, under the name of taufir, or excess, in the khalsia of the prince. Instead of that, I believe they were not accounted for, and the jagirdar generally swept the whole produce of the jagir lands. It was extremely material, therefore, that the prince should know the establishment of the revenues; that such officers as he chose to employ he should pay in money payments; and that he should resume the lands, the privileges annexed to which were continually abused, by affording an asylum and sanctuary to the rayats, who chose to leave the public lands belonging to the khalsia to the prince of the country, and to cultivate at higher price those lands which belonged to jagirdars.

Mischief arising from the nature of the tenure;

This was a mischief in respect to the tenure. But there likewise was a great [mischief] in respect to the nature of the persons who held these jagirs. For your Lordships have seen from the evidence that Asoff-ud-Dowla was a prince extremely addicted to the government and to the society of very inferior persons, unfit for a person of his rank and station to have conversed with; that some of the orderly sepoys, the mere common soldiers that had served under him, were advanced rashly and rapidly to the first places of trust and power; and that they had been the persons who had been invested with many of these jagirs. This was a mischief which, for the honour of the prince with whom we were connected by alliance, for the advantage of the country, and for our own derivative advantage with respect to sources for the payment of our debt, Mr. Hastings wished to be remedied. Mr. Hastings therefore [acted] upon a proposition of the Wazir, which did not aim—though the resumption of the jagirs was the thing generally stipulated for—did not, in his

And from the character of persons who held the jagirs.

Consent of Mr. Hastings to the resumption of the jagirs.

15 FEB. 1793. mind, aim at that general resumption which Mr. Hastings wished should take place, but he wished the resumption should be of his mother's and grandmother's jagirs, and not of those orderlies. As the gentleman at your Lordships' bar said, he believed he would never have objected to the resumption of his mother's and grandmother's jagirs, but that his wish was to continue the jagirs of these orderlies; but in the terms of the treaty it is a general right to resume all such jagirs, including those for which the Company were security, the net amount of those only being paid in money through the Resident.

Not considering for the moment whether the Begums were guilty of disaffection—disaffection, my Lords, is a feeble word to express anything like that of which they were guilty, which your Lordships will perceive by the most abundant testimony: they were guilty of the most flagrant acts of open hostility against this nation—but, laying that out of the question, and considering it only as a general regulation for the advantage of this country, if, even at that time, he had not been possessed of that intelligence of which he was possessed, and which warranted much more than the measures he had adopted, if he had not been possessed of a particle of that intelligence, yet as a measure of general imperial regulation Mr. Hastings ought, notwithstanding the guarantee of the Company, to have consented to the general resumption of the jagirs. Because, upon the same principle upon which every country in the world takes upon itself, for purposes of general convenience, to new modify the rights and modes of enjoyment which the individuals of that country have of any given species of property, with a view to the general advantage of the whole—upon that principle which you find in every turnpike and navigation bill which passes your Lordships' House—upon that same principle, as a general measure of regulation, upon adequate compensation, Mr. Hastings was compelled, in good faith, to have consented to this measure.

Case of the Begum considered.

Let us for a moment consider what was the fair object of the grant of a jagir to persons situated as the Begums were. The object is, certainly, that they cannot aim, or ought not, at territorial power; though, in fact, at the commencement of the Nawab's reign, they made a considerable aim at it, by desiring that the whole of that country might be put in the charge of persons of their nomination, and offering to pay the Company's debt if they might have that control and

influence in the country. Yet I must assume that the object of granting these jagirs was not military power, but the full and complete receipt of the amount of that land. That she collected it by her own people was only a further assurance to her for the effectual enjoyment of the thing granted. It was not meant to give her military power, to enable her to set up in defiance a sort of *imperium in imperio* against her son, but to enable her to collect the whole of what might be the produce of that jagir. That was expressly stipulated for in the treaty of Chunar. 15 FEB. 1793.

Now, supposing her the most innocent and meritorious person in the world, I contend that, upon the principle on which private rights are commuted for equivalent compensation, Mr. Hastings would have been warranted in consenting to the Wazir doing that to her which every prince does, in every country, with respect to the subjects of that country. The net amount was—before the measure of seizing her treasures was resolved upon and carried into effect—fully offered her by the Resident. He announced to her, in two several letters, the determination of the Company to substantiate to her the full amount of what she was intitled to under these jagirs, and requested her to receive the net amount of them; he undertaking to pay them at such time and place as were most agreeable to her. She, with that spirit which animated her on former occasions, answered, she would have none of his ready money; and refused to have anything but her rights, in the shape in which they were originally granted. I contend, upon every fair ground upon which compensations are made for individual rights in any country, that the Wazir was, with the consent of Mr. Hastings, warranted to have gone the length of resuming her jagirs, giving her their full value. But I shall have no occasion to resort to any arguments of that sort, for if your Lordships shall not be satisfied, before you shall have done with this Charge, that she was guilty of most flagrant, inveterate, determined, hostility against the English nation, I do not believe that there is a proposition that can be demonstrated or brought home to the conviction of any human mind. Nothing less than your entire, absolute, perfect and unequivocal, conviction is that for which I put in my claim.

Compensation offered by the Resident.

Refused by the Begum.

I had a reference, which possibly I shall be able by and by to find, to an extract from Vattel, whom I have already quoted, upon the very subject I am now discussing, of the right of a prince, after a solemn stipulation of this sort, where

15 Feb. 1793. the thing is found to be particularly burdensome or prejudicial to the country, to annul that stipulation, upon an equivalent being given to the party; and, though it is a general presumption that a sovereign's grant is to be taken most strongly against himself, yet that, where it is burdensome and prejudicial to the country, the sovereign is released from that obligation, making such a compensation as he is enabled to do.

Right of sovereign to commute a grant prejudicial to the country.

I need not waste more of your Lordships' time upon these topics, which do seem to me in effect, though they are all substantively charged in the Article, and though they occupied the labours of many weeks to the honourable Managers, but preliminary and introductory to that question, which I think is the main question—whether the Begums were, in fact, guilty of any acts of hostility towards the English nation that warranted the subtraction of the guarantee. That is the principal question upon which I conceive the merits of this cause turn. Or rather, whether Mr. Hastings—though I do not avoid the principal question in any degree—whether Mr. Hastings had such reason as would influence the moral and political conduct of any reasonable being whatever, to think and believe that the Begums had been guilty of that which is imputed to them, namely, acts of hostility during the dangerous crisis of our affairs in India. The evidence that I shall be enabled to lay before your Lordships upon the subject will be, I think, from the most authentic sources; for it proceeds, part of it, from the Begums themselves; part from the persons employed by them in the execution of their purposes; and other parts from those persons against whom the execution of such purposes was directed; that is, from the principals in the war, and from the instruments used in the course of the war, or of those hostile proceedings which took place immediately upon the arrest of Cheyt Sing, and the war which followed after that event.

Question of the Begums' guilt.

I do not know whether it is necessary at all to press your Lordships with any authorities, to show that, if one party is guilty of a breach of a treaty, it releases the other party from the obligation. I should hope and trust that such authorities would hardly be necessary. However, upon a subject which has occupied so much attention of the honourable Managers, and [as] they probably might question the extent to which those authorities might be pushed, if they might warrant us in something short of hostility in return, I will

state a very few authorities as found in writings upon the law of nations. 15 FEB. 1793.

All the rights that would attach upon the sovereign would attach upon her, and we had a right to inflict punishment upon her for her departure from her agreement. That is what is laid down in Grotius, and is certainly applicable to her, I conceive, in the relation she stood in to the Company. Any person who takes the advantage of the protection of another nation—which was certainly the situation of the Begum—impliedly binds himself not to be guilty of anything against the general wealth of that state whose protection he so seeks, and of whose protection he so avails himself. *

Authorities on the law respecting treaties.

Vattel, upon the same subject, says:—

> "Treaties contain promises that are perfect and reciprocal. If one of the allies fail in his engagements, the other may constrain him to fulfil them. This is the right derived from a perfect promise. But if he has no other way than that of arms to constrain an ally to keep his word, it is sometimes more expedient to disengage himself from his promises and to break the treaty. He has undoubtedly a right to do this, having promised only upon condition that his ally shall accomplish on his side every thing he is obliged to perform. The ally offended or injured in what relates to the treaty may then choose either to oblige the perfidious ally to fulfil his engagements, or to declare the treaty broken by the violation of it. Prudence and a wise policy must direct him what he ought to do on a particular occasion." †

There are other authorities that every thing contained in a treaty has the effect of reciprocal obligation; and that all the articles in a treaty which are upon conditions by default of those conditions are rendered null. Therefore, I conceive, I have only to establish that it is an implied condition that she was bound to amity and good faith; I have only to prove that she was so guilty; the consequence results, that we have right of punishment. And that right of punishment was exercised in a manner which, I trust, is more liable to exception and blame on the score of its lenity and mercy than for its excess and hardship.

Your Lordships are already apprised, that the period towards the close of the year 1780 was the most calamitous

Calamitous state of affairs in India in 1780.

* "He that coming from an enemy, or a strange country, commits himself to the faith of another king or people, does, without doubt, tacitly oblige himself to do nothing against that state whose protection he desires."—Grotius, "The rights of War and Peace," book iii., chap. xxiv. sec. ii.

† The Law of Nations; book ii., cap. 13, sec. 200.

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Letter of Dr. Balfour.

and perplexing crisis of our affairs that ever occurred since we have been possessed of any footing in that country. At that period, there is a letter that appears upon your Lordships' Minutes from a Dr. Balfour who lived at Patna, who had occassion of knowing, through the means of some persons who gave him intelligence, the intrigues that were going on at the court of Cheyt Sing. He transmits it in the month of November, 1780, which your Lordships, by a reference to your memory upon a former Article, will know was exactly the period when the assistance of horse was demanded from Cheyt Sing. At that very period, it appears, by the information collected by Dr. Balfour, and to which I would not advert, being as it is in the first instance only a rumour—I concede it to the honourable Managers to be, till it is followed up and verified by fact and by the acting upon it, nothing more than rumour—in the month of November, 1780, Cheyt Sing received a message from the Begum, while he was meditating upon the requisition of the Company, and doubting whether he should furnish the force required, encouraging him to resist the demand, and promising him the assistance of troops and money. Now, I only wish that this should for the present so far dwell in your Lordships' memory, that, when you shall afterwards find the thing which this letter states to be promised to be, in fact, performed, your Lordships will only let the treason and the mischief relate to that period which is assigned it by this letter, that is, to the period of November, 1780. When a person, having no motive to misrepresent any thing relating to the Begums, living at a distance from Benares, and having no such communication with them as might beget either favour or hatred, communicates that which came to his ears to persons conversant with the Begums and Cheyt Sing, if you find that verified afterwards, your Lordships will refer the intrigue and hostile disposition of the Begums to that period—November, 1780—to that period when Hyder Ali [had invaded the Carnatic.] And it is stated in that letter that Saadat, the Wazir's younger brother, who resided at Benares, [was observed] conversing with Cheyt Sing upon Colonel Baillie's defeat; which was an event extremely likely to catch the attention of those who were not affectionately attached to the British interests in India; and which, accordingly, so caught the attention of Cheyt Sing, our ungrateful though benefited zamindar—accordingly, so caught the attention of the Begum, who had been

The Begum encourages Cheyt Sing to resist the demands of the Company.

raised into and continued in that extraordinary situation of opulence and power in which she was, by the protection of our guarantee—at that moment did this distressing intelligence so affect the perfidious minds of those persons, that they conspired together to give the first effective opposition that could be to the British Government. 15 FEB. 1793.

My Lords, after that period, your Lordships recollect—I will not travel over them, it would be extremely unpardonable if I did—the events of the war with Cheyt Sing. I will only carry your Lordships' attention to that period of time when Mr. Hastings, after the massacre of Sivalaya, and after he had reason to believe that Mahadew Dass's gardens where he was then residing would be attacked, found it necessary to seek out for some place, where he and his attendants, and the British who were then with him, might go with safety. Upon that occasion, Mr. Markham, who had the charge of the post from Benares, has stated to your Lordships at this bar, that, upon its being considered between Mr. Hastings and him whether he should go to Chunar or to Javapore—Javapore being nearer to Fyzabad, Chunar being more within the Benares province—upon inquiry, they found that the number of men coming from the Fyzabad country made it perfectly dangerous and insecure to go that route. So early, therefore, as the very first blow was struck, assistance was coming in. Immediately after the calamitous matter and the whole of the bloody business that followed upon the attack at Sivalaya, the Fyzabad country was sending its voluntary assistance to the support of Cheyt Sing. This your Lordships will observe is the 21st of August. Immediately afterwards, as the difficulties of the British nation increased, you find the Wazir, whom part of the report had unjustly accused of disaffection and disregard to the British nation, in this crisis of difficulty and danger, comes with a prompt alacrity to Mr. Hastings and joins him, upon the 11th of September, at Chunar. Being on the other side of the river, he came within a mile of where Mr. Hastings was stationed, and lent him every assistance and every countenance and service in his power to afford.

Perilous position of Mr. Hastings in Benares.

He retires to Chunar and is joined by the Wazir.

At that very time, Colonel Hannay, one of the officers then in the principal command of the country of Oude, writes to Mr. Middleton, who had attended with the Wazir and who was with the Wazir at Chunar, informing him of that which [was most conclusive], if any part of it be true—and there is no reason to disbelieve the entire truth of every particular which that letter contains—that the Begum was engaged in

Letter of Col. Hannay, reporting

15 FEB. 1793. the most direct, open, mischievous, acts of hostility against the British nation, striking immediately at their safety in India; authorising, by her eunuchs, the levying of large bodies of men, which were continually sent to Cheyt Sing; precluding Colonel Hannay and his troops from access to the public markets—Colonel Hannay at that time enduring and being obliged to endure the insult of seeing, immediately in his presence, soldiers hired and levied to go and assist Cheyt Sing in his war—and hired and levied by whom? By the immediate ministers of the Begum; by persons who would not have ventured to have taken any step—certainly not a hostile step, in respect to the Company and our connections in that country—without the most express, explicit and authorised, declarations of the wishes of the Begum upon that subject! This letter is dated the 8th of September and dated from Fyzabad, the immediate residence of the Begum. And your Lordships will recollect that Mr. Middleton has stated that he did communicate all the intelligence he received while at Chunar to Mr. Hastings, as he received it; and that of course, therefore, this intelligence was, among other pieces of intelligence, completely notified to Mr. Hastings.

hostile acts of the Begum.

The information forwarded to Mr. Hastings.

This letter says—

"The whole country on the east side of the Gogra is in arms [and rebellion; my own troops are deserting, and the single companies are scarcely able to join other detachments. The forts of Goruckpoor, Bilma, and Dumreeagunge are taken from the aumils by the zemeedars, and even hircarrahs cannot pass; so that all communication of intelligence from my other detachments under Major Macdonald, Captain Williams and Lieutenant Gordon, is cut off and at an end]."*

Then he proceeds to mention a thing which leaves no doubt as to the criminal intention of the Begum; for it might be said, all this might be done without her consent, though contrary to the practice of these countries, that any person standing in the relation of an eunuch of the palace of any of these great persons should be engaged in any political measure of their own, without concert with their principal and without orders from their principal. However unnatural that is, according to all the principles of eastern policy, as we understand it to obtain, yet, as it might be supposed that the Begum had no notice of this, here is evidence now that the fact was notified; that, at this moment, in the crisis of our impending

* Letter of Col. Hannay, quoted in a letter from Mr. Middleton to Mr. Hastings.—Printed in the "Narrative of the Insurrection in Benares;" Appendix, p. 64.

fate, in the article of our danger, she had notice of the things that were doing, and was required to forbid and punish them; but she did not do it. He said, "I have sent Hoolas Roy." Hoolas Roy was the person employed to obtain intelligence, and was employed as an agent in that country, for every purpose in which such agency was wanted by the British nation. He was known to come on our behalf, being the person usually employed to go between us. He came with his representations to the Begum:— 15 FEB. 1793.

Col. Hannay's remonstrance to the Begum.

"I have sent Hoolas Roi to the Begum, to inquire into the reason of my people being prevented going into the town, [Cheit Sing's being suffered to raise troops here, and why her servants attempted to prevent my getting boats to transport the Company's guns and horse from Amora. I have also desired she will give orders for seizing the family of Sheakh Chaan, above mentioned; and], when Hoolas Roi returns, I will write you an answer."

Her answer never came: she persisted in sullen and contumacious silence. She never did what she was requested to do. She never laid open to the access of the troops of Colonel Hannay the bazaar, or market, where it was necessary they should resort for provisions. She never did what she was desired—endeavour to prevent Sheikh Khan from going on with hostile purposes in which he had been employed, by taking up his family or doing any one of the measures requested—desiring her servants to prevent his getting the boats and the like. None of these measures were taken. Then here, without more—it being told to a person, so bound by every tie of gratitude and honour as this woman was bound to us, that her servants are engaged in acts of immediate hostilities; that 1,000 horse and foot had been levied and raised there in Fyzabad, and had been furnished to the assistance of Cheyt Sing; that levies were made there hourly to support Cheyt Sing; and that her servants had [not] prevented his getting boats for transporting his troops and baggage;—these being stated, she does not condescend to give him an answer. If it rested upon that only, I should say that sufficient hostility of disposition was shown on her part; that she sufficiently adopted the acts of her servant in what he had done in the despatch of these forces, and that she had completely and substantially made them her own.

Responsibility of the Begum for the acts of her servants.

My Lords, these acts one can only refer generally to their principal by detecting their agent, in such a country as that, the situation of which we are now discussing. For it is not as here that the principal is visible, and acts immediately in

15 Feb. 1793 his own concerns, but they act uniformly through the intervention of agents; these agents very often not having, as they have in several instances, the authority of letters and immediate orders, but merely carrying a message, and therefore being liable, if their principal choose it, afterwards to be disavowed. Mr. Orme states strongly this manner of negotiation, and the way in which people of that country can screen themselves from the consequences of any purpose which they do not choose to avow, in terms which, if your Lordships permit, I will take the liberty of reading:—

"The secrets of the Princes of Hindostan are difficult. Hence, the public in Hindostan, deprived of authentic evidence, are left to judge of the actions of their rulers, either from public conjectures, or from the general idea which they entertain of the character of their lords." *

She never did disavow the acts of her agents with respect to this force—charged upon her, notified to her, as they were, and confirmed in point of fact by as authentic testimony as ever was produced at the bar of any court of justice whatever. For I trust it does not escape your Lordships' recollection, that Colonel Popham, Captain Wade and Captain Birrell, who were examined at your Lordships' bar, saw some component parts of this force, stated to have been sent, under Cheyt Sing; found them in arms at the battle of Pateeta, avowing their sender, and the cause for which they were sent. Colonel Popham, upon taking Pateeta, on the 20th of September, sees a man actually wounded, and asks him where he came from, what his corps was, and other questions; which led him to state that he was a najib of a corps of 700 men who had come from Fyzabad two days before; that he had received two rupees advance, and had come from the Begum.

Evidence of Col. Popham. He discovers troops from Fyzabad in the service of Cheyt Sing.

Good God! my Lords, [what am I to conclude], when I find that that force which is stated to have been levied by her minister, and despatched under her authority, the despatch of which is notified to her and complained of—when I find that that force is come—and when gentlemen, of the character and credit that I have stated, whose veracity and credit are intitled to as full and implicit belief as any witnesses that can be produced at the bar of any human judicature—when these gentlemen find the soldiers there, declaring the cause of their coming and their employer, without any motive for so declar-

* "History of the Military Transactions of the British Nation in Indostan:" by Robert Orme; vol. i. p. 59.

ing? For Colonel Popham is asked, what did he do with this wounded najib?—"Why, I did with him as I did with all the rest—sent him to the hospital. He was cured and dismissed." Therefore he had no reason to represent himself as coming from the Begum, more than [from] any other employer. Indeed he was putting himself in greater hazard by avowing his being sent by a person who, in sending him, would have been guilty of an act of treason; and he might have made his situation more perilous than if he came from any other quarter. He declared it to Colonel Popham, who asked it as a common question of curiosity, and received the answer he has stated at your bar. 15 FEB. 1793

Evidence of Capt. Wade and Lieut. Birrell.

Another gentleman, Captain Wade, saw another of these men. He was struck with his appearance, because he wore a particular uniform; the uniform, I understand, of the najib platoon corps, which consisted of about 4,000 men, which, at the death of Suja-ud-Dowla, had been broken up by his son, and most of the soldiers who had been engaged in this corps had been retained by the different jagirdars, and, among the rest, a considerable portion of them by the Begums. Captain Wade, having a servant of his own who had once been of this corps, and who chose, from partiality to the habit of the corps, to continue to wear it, seeing a man similarly habited, went up to him, and asked him where he came from. The man then told him a similar story to that which Colonel Popham had heard related by another soldier who was wounded—this was not a wounded man—that he had been sent by the Begum from Fyzabad.

It struck one of the honourable Managers that what they said about the two rupees was extremely improbable; but that was soon obviated by Lieutenant Birrell, of whom the question was asked. He said that two rupees was a common advance; that two rupees would buy 150 lbs. weight of corn in that country; and was therefore an adequate, and, he believed, a usual advance to soldiers.

Captain Wade said, he asked the question from no sort of idea that this man was one of the force sent by the Begum, and still less to ascertain the veracity of that account, of which he had no doubt, which imputed to the Begum a participation in the rebellion of Cheyt Sing. He said, it did not enter into his mind to doubt it; and that the thing was as notorious as anything can be; and that it was the mere accidental circumstance of seeing the habit of this man which led him to ask the question, and which produced this dis-

15 FEB. 1793. covery. Lieutenant Birrell saw two other men;—it does not appear that either of these was the one seen by Captain Wade; certainly not the one seen by Colonel Popham, because he does not mention that either of them were wounded;—that they stated they had arrived but two days before, and had been sent from Fyzabad. Can anybody suggest a reason why these men should mistake the place from whence they came? Would they fare better? Colonel Popham has told you that they were all served alike. Those that were wounded were sent to the place where they were cured, and were discharged. This man would be likely, as I stated before, to fare worse by stating himself to be sent by a rebel, rather than to be hired to any other indifferent sender of that force.

Therefore, not being able to give any reason why these four persons should all of them concur in this account, as to the person who sent them and the cause for which they were sent, the pay they had received and the time they had been there, I cannot but conceive that, they having the best means of knowing—for next to the person who sends another, the person sent has certainly the best means of knowing whether he be so sent as described—I cannot but conceive that your Lordships must believe, in the terms in which it has been related by these gentlemen, who could not be mistaken, and who certainly cannot be suspected of misrepresenting what they heard, what these men did so declare. These men, in so declaring, could not themselves be mistaken as to the cause of their coming; and, if it be so, your Lordships have a further confirmation, derived from the sullen silence of the Begum, that the thing so charged upon her was literally and substantially true.

Proof of the complicity of the Begum.

I am afraid, in going upon another head of evidence, I shall be obliged to occupy a larger portion of time than your Lordships will find it convenient to allow me.

CONCLUSION OF THE SPEECH OF EDWARD LAW, ESQ., COUNSEL FOR MR. HASTINGS, IN OPENING THE DEFENCE ON THE SECOND ARTICLE OF THE CHARGE, RELATING TO THE BEGUMS OF OUDE; 19 FEBRUARY, 1793.

MY LORDS, when I last had the honour to appear before your Lordships, I endeavoured to lay before you, with as much perspicuity as I was able, the actual situation of the original rights of the Bow Begum, antecedent to the treaty that was formed with her on the 15th of October, 1775. Her original pretended rights I should rather say than any real rights; for, I trust, I have demolished all pretence of foundation for the reality of a right to the treasures left in her charge by her husband, Suja-ud-Dowla, at the time of his death. I had stated to your Lordships the extraordinary pretensions that have been erected, on her behalf, to the property of these treasures. I had shown upon what inadequate considerations the Wazir had been induced to waive his unquestionable title to these treasures; and how improvidently the Company had been induced to sanction that waiver, by entering into a guarantee to the treaty of the date I have already mentioned. 19 FEB. 1793. Recapitulation.

I had further stated with what religious regard the faith of the Company had been observed towards the Begum, with respect to the treaty thus guaranteed, up to that period when, by the most gross ingratitude and daring hostility, she had forfeited all pretensions to that or any other protection from the British nation. I had stated to your Lordships, in order to give some idea of her original character, the ambitious views that she had displayed at the period of her son's succession, when she had applied to have the whole collection of all his dominions entrusted to her and to collectors of her nomination; thus endeavouring to supersede the legitimate authority of her son, and to attract to herself the sole and entire control of his dominions; holding out at that time a lure, which she thought might have been successful—an offer to the Company, in virtue of the trust of

19 FEB. 1793. the collections which she wished to obtain, to pay thereout the whole debt of the Company.

I had likewise stated that this lady, thus protected, without any one of her rights secured to her by this guarantee having been entrenched upon, without the shadow of a provocation, had, so early as in the month of November, 1780—which I proved by reference to the letter of Dr. Balfour—entertained the purpose of exciting our ungrateful zamindar and dependant, Cheyt Sing, to acts of hostile resistance to the commands of his legitimate sovereign, the Company, or, rather, the British nation; at a time when that hostility could be displayed and that resistance made with the most dangerous effect upon the general safety of the empire.

I stated to your Lordships that, at that time, we had to struggle, not only with three great European enemies, two of whom had fleets at that time in our seas—I mean the powers of France and Holland, then united in close alliance of hostility against us—but that we had at that moment to struggle with three combined powers, one of which single-handed has given us some trouble since, I mean the power of Mysore; that we had to struggle with the whole Mahratta power—that power embracing the [forces of] Madaji Scindia and the Berar Raja—connected as they were with the Nizam at that time and Hyder Ali, forming such a triple alliance as I have mentioned. At that crisis in our affairs, when it should seem that any particle of any further hostility against us in India would be likely to turn the scale against us, and depress for ever the power of Great Britain in that part of the globe, did this woman suggest to our favoured and protected dependant, Cheyt Sing, the design of refusing to comply with our demand of a supply of horse. [This he did afterwards], trusting to this promise of assistance which she had made him, and which promise she kept; for she sent the force that I have stated she had sent—these bodies of najibs, to whose appearance Colonel Popham, Captain Wade and Lieutenant Birrell, have spoken — to whose appearance there is a person, whose name I have not yet mentioned to your Lordships, who likewise speaks, I mean a native officer of Cheyt Sing, of the name of Mohammed Aumin Meyher, who takes notice of the forces sent from Lucknow, najibs and matchlockmen. I will by and by explain the difference upon which the honourable Managers rely, as importing that the force did not come down from Fyzabad. I stated that, at this crisis, so

Corroborative evidence of Mohammed Aumin Meyher.

perilous to all our concerns in that part of the globe, and when our dominion was tottering upon a precipice in India, this woman, having suggested to Cheyt Sing a resistance, and promising him assistance in the event of his resistance, actually sent such force to assist him. 19 FEB. 1793.

I had stated that the fact of her sending such force was established, not, as you would be taught to believe by the honourable Managers, upon vague rumour, but confirmed by the positive testimony of an officer upon the spot, who himself saw and heard the business of the levies going on; who knew that Behar and Jewar Ali Khan, her confidential eunuchs, applied to every man they met in the streets or markets of Fyzabad, who had the appearance of a soldier, asking him, why he did not at that moment tender his services to Cheyt Sing. I had shown you a letter of Colonel Hannay, dated the 8th of September, 1781, communicated to Mr. Hastings prior to the treaty of Chunar—for your Lordships will recollect that that treaty was executed on the 19th of the same month—in which letter he intimates, not only that this force was levied, but that 1,000 men of the description stated had been sent, and the commander is named Sheikh Khan. But Colonel Hannay had done more. He had applied by the public messenger, the common vehicle of intelligence between our Government and that of Fyzabad, to desire that the family of Sheikh Khan might be put under an arrest, in order to induce Sheikh Khan, from the regard he had for the members of his family, to return and perform those duties which he was in the act of violating. That letter, as I stated, was dated on the 8th of September. It would easily be communicated in the course of three days to Mr. Hastings, at Chunar, where he then was. Colonel Hannay having stated, in that letter to Mr. Middleton, that he had desired an answer from the Begum to his complaint of this injury, and likewise that he had been hindered from transporting his own baggage, and in the free march of his forces from one place to another; that his troops, in the place where he then resided, were prevented access to the markets for the purpose of purchasing provisions; representing the insults he received, and the disabilities from discharging his duty at that moment; to these complaints no answer came; because, if an answer had come between the 8th of September, when he gives the Begum this notice, and the 16th of the same month, allowing her—residing in the same city—eight long

Application of Col. Hannay for the arrest of the family of Sheikh Khan.

19 FEB. 1793. days to consider what answer she would give to this notice—if in eight days she had sent an answer, that answer must have been communicated, with that letter from Colonel Hannay to Mr. Middleton, prior to signing the treaty of Chunar. I had likewise stated that, of this force, whether consisting of the identical number of 1,000 men, as pointed out in this notification, or of any other number, there had been found, at the battle of Pateeta, men with wounds received in her service, avowing her pay, the cause upon which they were sent, the time of their arrival, the business they were employed upon, and giving that information which those persons were better than any other persons able to have given. Every soldier must at least know where he had been sent from, how long he had been coming, and what pay he had received. Up to this point of the confirmation of this information of Colonel Hannay I had arrived when your Lordships' trouble of the last day was closed.

My Lords, this was not the only communication that Mr. Hastings received long prior to the treaty of Chunar. This letter intimated to him, not only what Colonel Hannay saw and felt of insult and injury in the immediate residence of the Begum, but it stated the injury that the Wazir's service, and the service of Great Britain connected with it, were at that moment receiving, by the hostile opposition of the immediate servant of the Begum herself, within the limits of her own jagir. This is certainly not like the case of any imputed hostility, in a place where her power to carry into effect her intention might have been less complete; but it is the place where she had complete, entire and unequivocal, control. And who was that officer? It was not an officer in general in her service, who was only under the ordinary obligations of obedience that attach upon any person receiving her pay. He was, as is called, the chela, that is, an adopted son of one of her own eunuchs. Shumshire Khan, the man who had the charge of Tanda, and of her jagir, and of her finances at that place, was the adopted son of one of her eunuchs, Behar Ali Khan; likely, therefore, to derive from him a considerable treasure, which he was known to possess, and who would, therefore, have an increased motive acting upon his mind to be particularly studious, in such a crisis, to do nothing that should offend the person to whom he looked up in point of bounty and protection, and whose favour he could not so effectually

Opposition shown to the British forces by Shumshire Khan.

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forfeit as by doing an act in immediate defiance of his mistress, the Begum. It is, therefore, impossible for any human mind to conceive that Shumshire Khan, in command at Tanda, did not, at the time when he gave the opposition to the British forces which I am about to state, conceive and know that he was acting under the immediate authority of the Begum herself. To conceive that a person of that description should voluntarily put himself in a state of war with the Wazir, the Governor of the country, and with the whole power of Great Britain, is a monstrous and absurd supposition. He must, therefore, have looked to the Begum for countenance and protection. He must have acted under her authority, conveyed in the only channel in which her authority and pleasure is usually circulated and conveyed. I mean, through the medium of her immediate, acting, ministers, and the servants and eunuchs themselves.

Authorised by the Begum.

This opposition received by Captain Gordon at Tanda, which is within six-and-thirty or forty miles of Fyzabad, her own residence, is communicated by Captain Gordon, in a letter of the 7th of September, to Colonel Hannay. Colonel Hannay, therefore, revolving in his mind the injuries he was receiving, the prepared hostilities of which he was the eye witness, and having under his hand this letter of Captain Gordon, describing the injuries he had suffered, communicated the intelligence to Mr. Hastings.

Letter of Capt. Gordon on the subject.

This account is more particularly detailed in a letter Captain Gordon afterwards wrote, and in his affidavit; and will be still more detailed in the evidence your Lordships will hear from himself at this bar. The four officers in principal command in that country, all of them, were at this crisis transmitting information to Mr. Hastings, upon which, if he had any regard for his duty, if he had any regard for his character, if he would not put it in doubt whether he was not himself a confederate in the treasons of the Begum and Cheyt Sing, he must have at that moment acted. These four gentlemen, Colonel Hannay, Major Macdonald, Captain Williams and Captain Gordon, were all present in that country at the time when these hostile tumults were excited by the Begum—all speaking to the firm persuasion that they were excited by her; speaking with such means of knowledge as must overcome all infidelity and doubt upon the subject, as I shall state them to your Lordships presently. Colonel Hannay and Major Macdonald are dead; but the two survivors shall be presented before your

Further representations of the Begum's hostility made to Mr. Hastings.

19 FEB. 1793. Lordships; and, if you can have a doubt, from the account that they will render you, that the acts which were immediately done as against them were from her hostility, and done under the authority of the Begum, your Lordships will then, perhaps, have some reason to question the foundation of that penal infliction—for I will call it a penal infliction—that was laid upon the Begum afterwards.

But I ask your Lordships, if you should so conceive—which it is impossible you should—how would Mr. Hastings stand vindicated to his country, if, having the united information of all the men in principal command in that country, speaking to facts under their eyes and observation in the hour of writing, in the moment of that peril, expressing in language which cannot be feigned the dread that they might never meet again, and speaking as men do under the sense of immediate peril—what would this gentleman have deserved of his country, if, at that moment, he had permitted the undisturbed enjoyment of territory to be continued to persons who had so abused it to the destruction of his country? It should have been an impeachment of a different sort, if this gentleman had observed a contrary conduct—an impeachment that day that should have aimed at his life; for it would have been nothing less than treason to his country, if he had forborne to do that, which for having done he has stood six years at your Lordships' bar for trial!

Letter of Col. Hannay respecting the affair at Tanda.

The letter of Colonel Hannay being dated on the 8th of September was, of course, received within three or four days after, at Chunar. Mr. Middleton has already sworn to the receipt and communication of it to Mr. Hastings. It is in these words:—

> "This moment I received Captain Gordon's account of the loss of his detachment, [which puts my march to join you out of the question. It happened by the villainy of the fougedar of Tanda, Shumsheer Khan, a cheelah of Behar Ally Khan, who turned his guns upon the detachment; and an unfordable nullah in front, and many thousands of Rajepoots who had fought them all the way from Chowra Ghaut, made the sepoys despair. Zalim Sing and Puttypaul Sing mean to attack M'Donnald to-morrow with 2,100 men. Behar Ally Khan deserves death, as the loss of Gordon's detachment can only be imputed to him. His cheelah would never have acted so damning a part without orders from her." *

Complicity of the Begum.

Do your Lordships believe it possible that a man, standing in that relation to Behar Ali Khan, would have risked every

* Printed in the "Narrative of the Insurrection in Benares;" Appendix, p. 65.

hope he had of advantage, by doing an act in direct contravention of his will and pleasure? Or do you think that Behar Ali Khan would himself have ventured, as I put it to your Lordships before, to have begun a war against the British nation, without the authority of somebody who he thought would carry him through? And, therefore, well warranted was Captain Gordon in making the observation that Colonel Hannay repeats— 19 Feb. 1793.

"That his cheelah would never have acted so damning a part without orders from him."

He adds:—

"Jewar Ally Khan, in the Choke of Fyzabad, asks every man who bears the appearance of a soldier why he goes not to Cheit Sing for service? I mention these circumstances that you may mention them to Mr. Hastings and the Nabob, and the necessary steps be immediately taken to prevent what delay will render a very serious matter."

Now, as this is the alleged ground of action in Mr. Hastings, it is material to see whether he knew it at the time. Mr. Middleton has stated that he communicated it to Mr. Hastings, as it was natural he should, for he was at that time with the Wazir on one side of the river and Mr. Hastings on the other. He communicated to Mr. Hastings all the intelligence he had received during the whole of his stay at Chunar, and the stay of the Wazir on the other side the water. But did he there communicate it to the Wazir? For it has been suggested by the honourable Managers that this was a profound secret to the Wazir, and, even up to the moment when the Begum's treasures were resumed by the Wazir, that he did not know that any ground of resumption existed, or that she, her eunuchs, or anybody, had been guilty of any hostile act to the British nation. It is very extraordinary that that should be asserted; because the Wazir himself, writing about the time of resuming the jagirs, and before the seizure of the treasures, speaks of this very conduct of Shumshire Khan at Tanda. He says:— Known to Mr. Hastings and the Wazir.

"These villains deserve death—what villainy have they not been guilty of! My interest, my life, my honour, all depend upon the English."—

Intimating immediately that that life, that interest, that honour, had been drawn in question by this rebellious conduct of these eunuchs in the business of Tanda. Therefore, that which Colonel Hannay desires Mr. Middleton to com-

19 FEB. 1793. municate to Mr. Hastings and to communicate to the Wazir he had communicated; and both of them were, therefore, mutually apprised of the imputations that were thrown upon the servants of the Begum, and the hostile interference in the concerns of that country which was charged upon them. This, your Lordships see, bears date on the 8th of September.

Intelligence of the rebellion of Saadat Ali and the Begums communicated by Capt. Williams.

On the 7th of September, Captain Williams writes and describes the rebellion that was prevailing in that part of the country of Oude where he was, and he says:—

"Sadit Ally Khan and the Begums are concerned deeply in the business."

Impunity allowed to Saadat Ali.

This is a further communication from a distance of a hundred miles from Colonel Hannay at that time. But Saadat Ali Khan! Why, the honourable Managers contended that, inasmuch as nothing afterwards was done in the way of punishment of Saadat Ali Khan, it appeared that the rumour pointing at both was equally unfounded; and that, therefore, the only reason that could probably be assigned for the penal consequences which attended the supposed conduct of the Begum was her superior wealth, and that Saadat Ali Khan was protected, as I remember an honourable Manager said—"by the shield of his insolvency."

Though Mr. Hastings did not choose to press upon evidence unquestionably weaker against Saadat Ali than against the Begums—for there was no one overt act immediately chargeable upon any person under the direct authority of Saadat Ali—yet Saadat Ali, give me leave to say, did not stand wholly exculpated from all blame and suspicion in that business. Mr. Hastings, when he left Benares, confided to Saadat Ali the care of his wounded sepoys. He, with a policy very common, did take care of those sepoys; and Mr. Hastings says:—

Explanation of Mr. Hastings.

"The imputation rests upon him in some measure, but the good he has done is certain, the evil uncertain. From the sort of imperfect evidence I have against him, therefore, I will let the one stand against the other, and I will not press any thing penally against him."

History of Saadat Ali.

But there is the greatest reason to believe that Saadat Ali was early concerned in the troubles of that country; and I will state something of the history of this Saadat Ali, the half brother of the Wazir, which has not been disclosed already to your Lordships, in the course of this trial.

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In the commencement of the Wazir's reign, he had taken for his minister a person of the name of Murteza Khan. He was, your Lordships recollect from the evidence, extremely obnoxious to the Begums; and they, in a letter, early in the Wazir's reign, applied to have him removed, and Shein Khan and Busein Khan substituted in his place. Murteza Khan was invited by a man of the name of Coja Bussant, who had been a general under Suja-ud-Dowla, to an entertainment, and at that entertainment was most wickedly murdered. Coja Bussant, whether he had drunk himself up to a pitch of fury that might enable him to [effect] such a bloody purpose, or whether the wickedness he had committed had disordered his reason, rushed in a furious way, with his sword reeking with the blood of Murteza Khan, into the presence of Asoff-ud-Dowla, who had the presence of mind to call to the persons about him to cut him down; and he was destroyed in an instant. Immediately, upon the news of the death of Coja Bussant, Saadat Ali takes flight. He abandons the dominions of his brother, and takes refuge with Nujif Khan; and part of the Wazir's troops desert to him. He is received by Nujif Khan, and he remains with Ellich Khan, the very minister in whose favour the Begums had been thus importuning the Council at Calcutta. He remained there with Nujif Khan, he not being extremely well disposed either to the Wazir or to our interest; for, at the time of the confederacy, in the year 1780, of all the great powers in India against us, he was supposed to have been—and upon very good evidence from the gentlemen who resided on our behalf at Poonah—privy to that confederacy. He resided with Nujif Khan, till we, thinking it from principles of policy very convenient that, in the case of the death of Asoff-ud-Dowla, who had no heirs, his presumptive successor, his brother, should be in some measure in our power, opened him an asylum at Benares; for he was never permitted to return to his brother's dominions. We opened him an asylum at Benares; and there he remained under the shade of the Company's protection. Having, therefore, gone off in this way, upon the instant destruction of a man who had just murdered the minister of the Wazir, and who was supposed to be concerned in a deep plot laid for the subversion of his brother's throne, and having so apparently, or even actually, mixed in treason, he was very naturally a person upon whom, at the time of actual rebellion in the country,

Murder of Murteza Khan.

Is supposed privy to the confederacy against the British, in 1780.

Is received by the British at Benares.

19 Feb. 1793. suspicions should attach, and that his name should be joined with the Begum, who notoriously was concerned, by the immediate intervention of her agents, in exciting this rebellion.

Authenticity of the information forwarded by Capt. Williams.

I have mentioned Captain Williams. He speaks of Saadat Ali and of the Begums. He writes thus upon the 7th:—

"And Captain Williams had very good reason afterwards, which he will state by and by, to know by the actual intercepting of letters with the seal of Behar Ali Khan."

It is by mistake put in the examination before the House of Commons to have been Jewar Ali Khan. It makes no difference, only for the correctness of the evidence. There was a letter to the Raja of Ghazipore, desiring him to bring forces to his presence, which was intercepted; it was concealed in the hollow of a bamboo. This letter had the signature of Behar Ali Khan upon it. I am now stating what information Mr. Hastings had prior to the 19th of September. Captain Williams had occasion to know perfectly, afterwards, that which we knew with a considerable degree of certainty at the very time, on the 7th of September, when he writes, and which he had communicated to Mr. Hastings as that which he had no doubt of, namely, that Saadat Ali and the Begums were concerned in the rebellion.

Intelligence received by Mr. Hastings prior to the 19th of September.

These are two letters Mr. Hastings had upon the subject. He had another letter from Colonel Hannay, which was before the 13th; for he had a subsequent letter from Colonel Hannay, of the 13th, which would be likewise received before the 19th. In this subsequent letter, he describes the extent and scope of this rebellion. One of the honourable Managers has asked us, in a taunting manner, where it existed. I will state from . . . . He says:—

Second letter from Col. Hannay.

"From Goonda to Manjee, and from Fyzabad to the Banares district, and across from the Gogra to the Ganges, the country is in a state of rebellion."

He then states, that he hopes to God a sufficient force is ordered for the reduction of Cheyt Sing:

"For"—says he—"people are daily sent to him."*

And this is a further sending of supplies; for, in his letter of the 8th, he states that Sheikh Khan had marched with a force of 1,000 men, two or three days before that time. He

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* "Narrative of the Insurrection in Benares;" Appendix, p. 65.

now states, that there are daily sent to him horse and foot from Fyzabad. 19 FEB. 1793.

Your Lordships will recollect, perhaps, that in the evidence of Colonel Popham it was stated, that there were several corps of najibs. There was a little slip in the testimony of that gentleman, the first day, in misunderstanding a question of ours, which he, with the anxiety every gentleman has not to be misunderstood, desired that he might come up and correct. The first day, we asked him concerning Captain Wade; he said, "there were many of them;" which might import that there were many of that name in the service. He explained that his answer was applied to the question of the najibs—whether there were several corps of the najibs. He said there were several corps of them that were actually at Pateeta.

Correction of Col. Popham's evidence.

Then the account which is given by one of the officers, Mr. Wade:—I think he says, he understood from the najib with whom he spoke, that the corps of which he was a part consisted of 600 men: Lieutenant Birrell says 500; and Colonel Popham 700. It is possible that there might be, according to the account given by Colonel Popham, three of these corps, each consisting of the several numbers these gentlemen have stated; or the men might not know the whole number of which their corps consisted. And I understand, from gentlemen acquainted with the East Indies, that, unless they are paraded together, or have other means of information than usually they have, it is very probable that a man might not know the whole number of the corps of which he was a member. Colonel Popham has said there were several of these corps. [Sheikh Mohammed Amin Meyher,] a person under the command of Cheyt Sing, gives in an account of the forces of Cheyt Sing, which was laid upon the table, and which forms a part of the Benares Narrative, which states that the number amounted to 1,000 swordsmen from Lucknow.*

Number of najibs present at the battle of Pateeta.

Stated to have come from Lucknow.

The honourable Managers have said,—"It is impossible this can be the force you mean: Lucknow and Fyzabad are different places."

Is it extremely improbable, that in describing a force as coming from a country, you should put down the capital of that place? But I will show it was impossible they should

* "Narrative of the Insurrection in Benares," p. 43.

19 Feb. 1793. have come from Lucknow, because that was the residence of the Wazir. Several gentlemen who are now, probably, within hearing of me, while I am speaking, were at Lucknow at the time, and could not have been ignorant of the fact of the emission of any such force from Lucknow. And no such description of forces could come from Lucknow, the Wazir being himself upon the road at the time they were likely to come, he having met Mr. Hastings on the 11th of September; and Colonel Roberts, who was marching, with a regiment that had been at Lucknow, to join him, arriving at Chunar upon the 13th. Therefore, there were military on the road all the time, who could not possibly be ignorant if such a force had been travelling there; and the gentlemen at Lucknow could not well have been ignorant, if any such body of forces had been levied and sent from thence. Therefore, I must understand them to be sent from the country of Oude—from Lucknow, as descriptive of Oude generally.

Arms of the najibs.

But there is a mistake in the account, when he states najibs [to be] swordsmen, if by swordsmen he meant it to be understood that swords were the only weapons they used; for matchlocks, as has been stated, form part of the weapons they are in the habit of bearing; and they were found at the siege of Pateeta in a battery; and it is not likely that they should be placed in a battery, without they had been something more than mere swordsmen. However, no najibs are so armed: they are armed with matchlocks. Therefore, unless they were mere peons who attend as matter of state, they would be armed with matchlocks as well as with swords.

I have stated a letter subsequent to the 8th. Here is another, of the 13th, in which he says:—

"The present insurrection is believed to be with an intention to expel the English."—"The Begums have almost themselves recruited for them."

So visible has their interference and zeal been upon this occasion, that they might be said almost personally to have levied troops for their service! With this information before him—and is it necessary to ask that he should have known more than was disclosed upon the face of these affidavits? He was at [Chunar,] where Lieutenant Birrell has stated that the news was so notorious and the belief so general of the disaffection of the Begums, all the time that he staid there—which he supposed to have been only to about the middle of

September, but which was to the 19th—that it would have been ridiculous to have doubted it; that it was as notorious and public as the rebellion in 1745, and no one had a doubt about it; and Captain Wade said, that a person who had thought it necessary to have any further evidence, by way of confirming the truth of it to people upon the spot, would have been considered as if he was joking, so perfectly notorious was this fact at that time. Mr. Hastings had, therefore, before him, not only the general notoriety and opinion of the country that prevailed, but likewise written accounts, from persons upon whose information he was bound to act—from these four officers. I have mentioned at present, I think, only Captain Gordon, Captain Williams and Colonel Hannay: I have not mentioned Major Macdonald. I will state what he had from Major Macdonald. He states, that at that time he was at Amorha, which is about seven or eight miles, or a little further, from Fyzabad; that his people that went to Fyzabad were daily insulted there; that he expected Zalim Sing to come over, and expected his destruction from Zalim Sing. And he stated that the Begums had made offers of assistance and money, I think. I will state the very words:—

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Notoriety of the rebellion.

Letter of Major Macdonald to Mr. Middleton.

"It is the public talk of Fyzabad where my people are daily insulted. Likewise Zalim, who is with 2,000 men on the other side and means to cross in the morning, boasts that he will soon do for us, as the Nabob will send Hannay no assistance; that he is sure of; nor will any of the collectors pay more money. We shall, therefore, shortly have none to pay our troops with, while they have plenty. Hannay is now about two coss below Ry Ghaut, on the Oude side, with only two companies, two guns, and, I believe, some disaffected horse. I have written him pressingly to cross to this place; for, should this Zalim be over before him, I shall be hemmed up in a small fort with 150 sepoys; when Zalim will take care that Hannay does not get over to relieve me; perhaps, while attempting to pass the Gogra, be attacked by the people of the Begums, with the zemindars set on by her."

Perilous position of the British troops at Fyzabad.

Then he says to Mr. Middleton:—

"Look to yourself Nat! You may be in the Nabob's power. You may think me humming, but 'tis more than odds we never meet again."*

This letter came to Mr. Hastings in a particular manner. It had been sent, as directed, to Mr. Middleton. It had been intercepted by Cheyt Sing; and a man of the name of

Recovery of the intercepted letter

* "Extract from letter of Major Macdonald to Mr. Middleton, 9th September, 1781.—Printed in the Appendix to the "Narrative of the Insurrection," p. 118.

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of Major Macdonald.

Barnet, a prisoner in Cheyt Sing's camp at that time, had obtained this letter and transmitted it to Mr. Hastings. It had been received by Mr. Hastings on the 18th or 19th, in the morning; because Mr. Palmer, in page 211 of your Lordships' Minutes, appears to have acknowledged that letter. On the 19th of September, 1781, he states that the Governor General had received that letter. Therefore, Mr. Hastings had, on the 19th of September, information from all. He had not a letter immediately from Captain Gordon, but he had one from Colonel Hannay, who transmitted the account contained in the letter from Captain Gordon, and, therefore, stated his distresses as authentically as if they had been stated by his own pen; for it is a transcript, in effect, of that letter; and which account will be verified by Captain Gordon himself.

Complete information possessed by Mr. Hastings, on September 19.

Having, therefore, all this information, what did he do? He did no more than what, I contend, was defensible upon principles of general policy. For he did not go to the seizure of treasures by the treaty of Chunar: he only went to the resumption of the jagirs—the resumption of her territorial possessions—upon a full equivalent. The Company's faith was pledged to pay her the net receipt of her jagirs, whatever they might amount to; and to no other extent was she mulcted than to the dispossession of that territorial power she had. It seemed, as I said before, rather blamable on account of its lenity than for any excess on the score of hardship.

Resumption of the jagirs upon payment of an equivalent.

I shall by and by trouble your Lordships with the evidence that specifically falls within the period later than the 19th of September, to show what further and more complete information he had upon that subject, and which precluded all doubt—though I think none could be entertained—of the hostile behaviour and conduct [of the Begums] at that time. It is said, Mr. Hastings did not believe this intelligence. Why he should not believe that which was calculated to induce belief in any reasonable mind, I know not. But the honourable Managers have contended he did not believe it, for this reason—because, in his correspondence, in the few letters that we have of it, with Mr. Wheler, he does not at that period mention the hostility of the Begums.

Disbelief of the intelligence imputed to Mr. Hastings.

Now, can your Lordships think it is extremely wonderful, when I shall lay before you the sort of letters he wrote, and the difficulty under which they were conveyed, that he did not mention his suspicion or knowledge of the treason of

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Reasons for Mr. Hastings' silence on the subject of the Begum's hostility.

the Begums—which being intercepted by them might have confirmed them in their hostile disposition—although a period had intervened of more than six weeks, from the 16th of August, when the massacre was at Sivalaya, to the 29th of September, in which time Mr. Hastings had been writing, as he naturally would upon such an occasion, short letters to Mr. Wheler and the officers in the country—for of course at that period his correspondence would not be very explicit and full? On the 29th of September, in a letter to Mr. Wheler, he mentions having received no answer from Mr. Wheler, [written] with his knowledge of the troubles. Now is it very wonderful that, writing in every letter, as he does,—"I have received no letter from you;"—"so many letters have been intercepted I doubt whether this will come to your hands;"—with the cautious language of most of his letters, is it not likely he should confine himself to the relation of those subjects which were equally known to Cheyt Sing and himself?—and he is telling Mr. Wheler only that which he might learn from Cheyt Sing—the events of the war.

Mr. Hastings intimates, they say, in these letters, no kind of suspicion of the misconduct of the Begums. Now, I beg to say that the language of these letters certainly does import, to any person reading the whole of that correspondence, and reading afterwards the Narrative where similar language seems accidentally to be adopted, an expression or so [of suspicion.] In fair comment, you will believe that he had, at the time when he is using a particular expression—the contagion of example—which he uses at an early period and afterwards adopts in the Narrative, an idea of that very example which had been taken by the Begums of the misconduct of Cheyt Sing.

Indications of suspicion in Mr. Hastings' letters.

He writes, first of all, to Colonel Morgan, who joined him with great promptness and spirit, with a very large force. [For,] finding all the correspondence interrupted, hearing nothing from the Governor General, he knew he must be in danger, and with great spirit and good sense marched instantly to him with a large force. This is a letter written on the 8th of September.

> "If your presence shall be required, you will receive the surest proof of it by the failure of my letters. I less fear the actual enemy than the contagion of the example. I am much pleased with the Nabob."

So he puts the Nawab here in competition with somebody who, he fears, will be infected by the example. To

19 FEB. 1793. Mr. Wheler he writes on the 18th of September, 1781, the day before the treaty:—

"The province of Oude has catched the contagion."—

Then he knew a rebellion had begun in Oude. Then, if that fact had reached his mind, is it likely it should come unaccompanied with other circumstances which attended its existence, namely, mention of the persons under whose favour and countenance this rebellion began?—

"The province of Oude has catched the contagion; but I shall dismiss the Nabob in a few days, and doubt not but his troubles will be soon quelled."

Termination of the troubles in Oude.

Though this treaty was entered into on the 19th of September, at Chunar, yet the troubles at Benares, and the greatest part of Oude, did not entirely subside till after the capture of Bidjey Ghur, which was on the 10th of November following. He says, in this letter to Mr. Wheler of the 18th of September,—"I have not yet received one letter from you." It was in contemplation to form, perhaps on the following day, a treaty with the Wazir, on the subject which the treaty of Chunar respects. Is it extraordinary that, having not received one letter in the whole month or two [during] which he had been absent from Mr. Wheler, when the course of the post would carry them in three or four days—is it wonderful that his letters should be short, and not mention any intended design, but merely [give] a relation of the circumstances then passing, and the actual events of the campaign?

In a letter written on the 19th of September, he says:—

"I have less cause to guard against the actual enemy than against the contagion of example. The Nabob has acted most honorably."

This language, which is used in several of the letters, we find likewise in the Narrative afterwards. He says:—

"No sooner had the rebellion of the zemindar manifested itself than its contagion instantly flew to Fyzabad."

The same expression, and referable to the same subject. He says that—

"In the city of Fyzabad, the mother and the grandmother of the Nabob openly espoused the part of Cheit Sing."

This is the Narrative; but I am only observing that the same expression is used in the correspondence prior to the treaty of Chunar. He says, in his second minute explanatory of the treaty of Chunar:—

"When a sudden rebellion had deprived us [of every foot of land in this province, and the contagion had involved the whole province of Oude in] a similar defection—" * 19 FEB. 1793.

In this correspondence with Mr. Wheler and with Colonel Morgan he does allude to this subject, but certainly from prudence forbears to detail the circumstances of his knowledge, with that length and explicitness which he would have done if his letters had been more safe from interception. Now, to show that real danger existed of their being intercepted, I will state the course of the correspondence, which you will find in this first volume, in which you will find a multitude of instances of correspondence stated to be intercepted. He says:— Interception of despatches.

"I have writen many letters—all, probably, intercepted."

On the 31st of August, he writes again:—

"I doubt the possibility of the first having escaped the vigilance of the people who are stationed in every part of this zemindarry to intercept my letters. For the conveyance of this packet I shall trust to a light boat."

On the 1st of September, 1781, it appears that he sent three despatches to Colonel Muir and Colonel Morgan, and they had been sent inclosed in a quill. He says to Colonel Muir:—

"I have sent your credentials in form. [I do not repeat them in this on account of the dangers of the road; but, in case of their miscarriage,] this letter must serve in their stead."

He writes afterwards, on the 10th of September, to Colonel Muir. All this was before the treaty of Chunar.—

"I have since received intelligence that one of my despatches has been intercepted, and it is not unlikely that the other may meet the same fate. I have also sent a second letter, of the same substance with the first, but without credentials. The one which you mention to have written on the 13th has not reached me. I imagine it has fallen into the hands of Cheit Sing's people."

On the 29th of August, 1781, Colonel Morgan writes to Mr. Hastings, and says:—

"The unusual failure of intelligence from you, and the reports which are brought to me by the natives being fraught with alarming accounts of your situation—"

He goes on, and states his intention to meet him, as there is a possibility of the orders having miscarried. What he

* Printed in the Appendix to the "Narrative of the Insurrection in Benares," p. 13.

19 Feb. 1793. supposes possible had, in fact, happened. They had miscarried; and almost all the correspondence of this period was, in fact, intercepted. Mr. Hastings, in his letter to Colonel Morgan of the 25th of August, says:—

"I have written many letters to you."

He writes two or three words only, for fear of being intercepted:—

"March, or send your force. I repeat the above orders."

Letters of a line or two, from an apprehension that, if he detailed more particularly, those particulars would be conveyed to the quarter to which he did not mean they should be conveyed—that they would reach the hands of his enemies, and not of his friends. Major Eaton writes:—

"I have forwarded you six letters by different despatches, but as I have not yet been honored with your instructions, and am daily receiving reports of the situation of affairs towards Chunar, I am fearful of their having miscarried."

I will now recite to your Lordships the last of these letters, which was prior to the time when Mr. Hastings says he should reserve his further intelligence for a detached narrative. On the 29th of September, he writes to Mr. Wheler:—

"I have not heard a word from you since the troubles of Benares began."

He must, therefore, suppose that his own letters or those of Mr. Wheler were intercepted, or that both were; for, if Mr. Wheler had received the letters, he would probably have answered them. He says:—

Determination of Mr. Hastings to draw up a narrative, for the information of Mr. Wheler.

"I deem it a misfortune that not one of your letters written with the knowledge of the late troubles have reached me, and much fear that many of mine have miscarried. It is my intention to employ the first hour of my leisure in drawing up a detached narrative of the circumstances which have happened since the 14th of August, for your information."

He, in the same letter, says:—

"I have forborne any particular comments in this place; reserving them for where they will be more properly introduced in my detailed narrative."

The wonder, therefore, ceases. Mr. Hastings had done all that a prudent man would in such a situation do—allude darkly and generally to the troubles in Oude, at a time when his correspondence was so liable to be intercepted: and, having done so, and the period of the 29th of September

being come, when there would be so many events that he could not, without disordering the whole relation, crowd them into one letter, he says:— 19 Feb. 1793

"I will reserve the whole of our correspondence which has been cut off for a detached narrative, which I will send you."

But Mr. Wheler must have been apprised of the treaty of Chunar by some letters, certainly received long before the period when the Narrative was transmitted. For I find in a letter of the 13th of December, written by Mr. Hastings to Mr. Wheler, he is alluding to the agreement with the Wazir and the treaty of Chunar as a thing perfectly known between them. What those letters may be, we have no means of access to. Mr. Wheler is dead. But there must have been some, because the letter of the 13th of December refers to some antecedent communication of the treaty of Chunar. Correspondence between Mr. Hastings and Mr. Wheler.

After the 29th of September, having expressly reserved for a detailed narrative the particulars of the transactions of that country from the breaking out of the troubles, Mr. Hastings writes some other letters upon particular subjects to Mr. Wheler. And the honourable Managers have observed, that Mr. Hastings, writing upon all manner of subjects, never once suggests the mention of the Begums or the affairs of Oude. After what I have stated, that he had expressly reserved that subject for a detached narrative, it is no longer extraordinary that he should not be breaking his own purpose, and telling a story piecemeal which he had reserved for a narrative which was to contain the whole account.

The Managers state that—

"They will now produce the correspondence between Mr. Hastings and Mr. Wheler, to show that Mr. Hastings there details [minutely all reports—all circumstances—all material transactions whatever—that came to his knowledge, and never once mentions the least hint or insinuation] against the Begums."*

I have already stated that, that forming a part of the business of Cheyt Sing, and he having expressly reserved it, was a sufficient reason for forbearing to mention it after that date of the letter of the 29th. Further explanation of Mr. Hastings' silence as to the Begum's hostility

The first letter after the 29th of September is the 7th of October, 1781. That letter relates merely to the equipments of the troops and the stores of Chunar. In a letter

* "Minutes of the Evidence," p. 584.

19 Feb. 1793. of that sort—a mere official letter—it is not likely you would find an account of this subject, so reserved for a detailed representation.

In another letter, of the 13th of October, there is an account of the services of Beneram Pundit and his brother during the troubles of Cheyt Sing, when those persons had offered a considerable loan to Mr. Hastings, during his distresses. Not a word is mentioned, in this letter, of Oude. And therefore it would be strange to introduce this subject, nothing conducting the mind to any mention whatever of the matter so specially reserved.

The next letter which is mentioned by the honourable Managers respects solely the establishment of the courts of judicature at Benares, and nothing else. The mention of Asoff-ud-Dowla there is only as to his former sovereignty of that country, without any mention of any thing relative to that country subsequent to 1775.

The next letter that is read respects a delegation of Mr. Anderson to the court of Madaji Scindia, and [of Mr. Chapman] to Nagpore. Would your Lordships, in this account of the credentials given to these gentlemen and the object of their respective embassies, expect to find such a detached subject as this introduced?

The next is a letter which respects Sir Eyre Coote's correspondence from Madras with the Board; the dissatisfaction he had expressed in some accounts upon the subject of military regulations;—respects General Goddard's and Colonel Muir's situation; the Mahratta peace with Madaji Scindia; and not one word, from beginning to end, upon the subject of Oude, or any thing relative to the situation in which Mr. Hastings then was; but purely respects the general circumstances of the army, and, particularly, the disputes then subsisting between the Board and Sir Eyre Coote.

These are the letters the honourable Managers read, in order to found the argument that Mr. Hastings did not know of any such thing; for, if he had, he would have mentioned it in this correspondence. In this correspondence, every letter has its peculiar and appropriate subject; and he had before expressly reserved it for a detailed narrative in another place, and it would have been a breach of his promise to have introduced it elsewhere.

I will now proceed to the evidence which Mr. Hastings had, in more full detail, after the treaty of Chunar; which

proves more perfectly the actual rebellion of the Begums, and left him in such a situation that, if he had doubted, or acted as if he had doubted, in respect of them or any measure that was necessary to be taken of prevention or punishment, he would have stood seriously and very deeply responsible to his country. 19 FEB. 1793.

Evidence of the rebelliou subsequent to the treaty of Chunar.

A great part of the evidence with which I shall now trouble your Lordships is contained in what are called the affidavits. When I say called, they are affidavits; but they are not depositions made in this Court, and, therefore, in this Court, they are to be received only as papers referred to by the Narrative; as papers upon which the honourable Managers have themselves commented and erected arguments; which they have given in evidence; and, therefore, which are equally open to us, in respect both of evidence and argument, as they were to them.

This evidence comes under a stronger sanction, however, than ordinary unvouched assertion; inasmuch as it comes under the sanction of that which was highly obligatory upon the conscience of the persons giving it—the sanction of oath, administered according to the forms and usages of their own country. Although great part of this evidence was communicated to Mr. Hastings about the period of time when the affidavits were made, that is, towards the end of November and the beginning of December—both, however, long before the measure was actually put in force respecting the resumption of the jagirs—yet it is but fair to ask credit for Mr. Hastings having received from other quarters, and by communication from the officers in the camp, the bulk of that intelligence which is contained in these affidavits. For, at a time when all intelligence would naturally seek him as its centre, your Lordships are to suppose that the facts which are here verified were not then first known to Mr. Hastings, and that he had not preserved himself in a state of perfect indifference and perfect nescience as to all the concerns of Oude, up to the time when this account is further detailed, for the information of the Company at home, upon the affidavits which are now laid before you.

Corrupt motive for accusing the Begums imputed to Mr. Hastings.

It was said by the honourable Manager, that Mr. Hastings unquestionably never entertained an idea of accusing the Begums, or any idea of their hostility or even disaffection, prior to the 10th of November, when, upon the capture of Bidjcy Ghur, and the appropriation of the treasures there taken to the use of the army, instead of to the use of the

13 FEB. 1793. Company, being disappointed of that treasure which he looked to as a resource, he then fixed upon the Begum's treasures as a resource. But I will show your Lordships that he had this intelligence and these facts before him, and knew that these facts were so done in the country; that the notoriety subsisted in full force early in the month of September, and with unbroken thread from that moment down to the present moment: for there is not a man in England, I believe, who disbelieves it. I never heard of but one man who intimates a doubt of it, and who had himself heard it in October. Captain Edwards is the only man who was there at that time, or, at least, in that part of India where these things were going on, who could say that he had a doubt of it. He says nothing but this:—that he was with the Wazir, and did not hear of it till a fortnight after his return, and then some of his people heard of it from the Resident's people. I shall, probably, comment upon his evidence by and by, but I will, for the present, just make this observation upon it—that this gentleman, who, alone of all men in India, did not hear of this, had been stationed during the time at Chunar, at an out-post, and had not much communication with the army; because, he said, he was in the day supplying Colonel Popham with provisions, and at night at an out-post.

Evidence of Capt. Edwards.

In order to try the accuracy of this gentleman's knowledge and memory, he having given an account of the state of Oude which applied to moral and natural causes, and not political ones, I asked him, whether he had not heard of any inconvenience that Oude had suffered by natural causes from a drought? I put it to him:—"No; there was no drought while I was in the country." "When were you there?"—"From 1777 to 1783." "Did you never hear of a drought in 1779 and 1780;—so considerable a drought that there was not three days rain, I think it is stated by Mr. Purling, in the whole season?"—"No; I do not recollect such things." "Good God! were not there remissions of rent upon that account?" No; he knew nothing about it. And Mr. Purling, residing at that place, states it as one of the most calamitous droughts that ever happened. He stayed till 1783. In 1783, there was a drought which produced a famine. At that period he heard nothing of it. He was very quietly in his station, attending the Wazir: he did not know anything of the distresses that desolated the country. And this gentleman is so incurious an observer that he

stayed in the country while two famines happened and knew nothing about them! Now a gentleman so incurious might have a rebellion rising, during the time he was in the country, and know nothing of it. 19 Feb. 1793.

That is the only particle of evidence with which the positive testimony which we have to lay before your Lordships, or which the honourable Managers have laid before your Lordships, is encountered.

Misstatements respecting the letter of Major Macdonald.

One of the honourable Managers—it must have been a slip certainly—says, that, in the letter of Major Macdonald which is written, as he says, from Fyzabad, and on the 10th of September, he never mentions once the rebellion of the Begums. Now there are but three mistakes in what the honourable Manager states. First of all, the letter is from Amorha, not from Fyzabad. In the next place, it is dated on the 9th, not the 10th. And, lastly, he mentions the rebellion twice. It is in the letter, page 211 upon your Lordships' Minutes, which I have read already, and in which he states that he should possibly be stopped by some of the zamindars sent on by her; and he mentions that she had given the same advice to the Wazir; which was, to obstruct as much as possible the junction of our forces. Therefore, that letter is extremely mistaken by the honourable Manager who has chosen to comment upon it.

Conclusive evidence of the Begums' guilt in the possession of Mr. Hastings.

If Mr. Hastings could have had the least particle of doubt at the time of signing the treaty of Chunar, on the 19th of September, with the evidence before him, which I have stated, of a letter from Colonel Hannay thus giving an account of his own distresses—of the march of Sheikh Khan's force—giving an account of what had happened to Captain Gordon—giving a letter from Major Macdonald through Mr. Barnet—if he could have any doubt, how would all doubt be put an end to, four or five days afterwards, when, at the siege of Pateeta, these two members of different corps were found in arms against us, and confessing the purposes for which they were sent, and without a motive; for it is impossible to assign a motive why they should falsify their sender. They could gain no advantage—produce no remission of punishment—by it. It does not appear anything further than the mere disclosure of truth upon a question put to them, there being no further motive on the part of the inquirer than a natural curiosity to know where these men had come from; none of the inquirers addressing the question with a view to have any

19 Feb. 1793. discovery upon the subject of the rebellion of the Begums, because they all, unconnected with these circumstances, already believed they knew of that fact.

My Lords, I have hitherto confined my observations principally to the intelligence transmitted from Colonel Hannay to Mr. Middleton, in those letters of the 7th and 13th of September, and the intervening letters, and the letter of Captain Williams. Now, with your Lordships' permission, I will discuss further the circumstance of Captain Gordon, and the relation he gives of the sort of interruption he received from Shumshire Khan; and your Lordships will judge whether it is possible that that should not have been a hostile interruption, and given under the express order of the Begum, whose amil he was.

Narrative of the affair at Tanda. Captain Gordon, on the 7th of September, having set off under orders to join Colonel Hannay at [Akberpoor,] had marched the whole day, and had, in the course of his march, been considerably interrupted by some tumultuous bodies that had attacked him, amounting together to near 10,000, at different times. He came at noon day to the opposite side of the river to that on which Tanda is situate, Tanda being the Begum's jagir. When he arrived there, there was found on that side of the water on which he was, a servant belonging to the amil. Captain Gordon gives a letter to that servant, and desires him to deliver it to the amil. In this letter, he desires him to send over boats to convey him across; to procure the conveyance of his detachment over that river; and to accommodate him, as he expected in duty he would, in the conveyance of his detachment.

It may be said, this letter never reached the amil. Did it not? In one of the affidavits made by an officer of Captain Gordon's, he states, that a person who had swam his horse over was by, and saw the amil receive this very letter and read it. What is the size of the river? It is not, I understand, above a third of the breadth of the Thames at Windsor, so that the voice could be heard over. Captain Gordon's munshi called to them to send over boats, and desired they would instantly supply him. He received in return insulting language, and no boats were sent. After this, the amil brought down three guns, and planted them opposite the place where Captain Gordon was, and he drew up his troops there to oppose him, if he should attempt to pass. Was this opposition levelled at Captain Gordon, or against the people who might be supposed to be pursuing

him, and he was afraid might pass over with him?—because that might have been a proper excuse. Everybody but Captain Gordon was permitted to come. It was levelled against the British merely; for the horsemen who were with Captain Gordon were permitted to swim their horses over, and to arrive on the other side without interruption. The moment the harkara of Captain Gordon, after having called for boats in vain, was mounting an elephant to cross the river, their pieces were levelled at him and he was forbid to come over. 19 Feb. 1793.

In this situation, the soldiers who were with Captain Gordon considered him as a devoted victim. They threw off their regimentals, threw down their arms, and swam over. Out of a body of 400 men, he was left with only twenty; and it was not till sunset, after much entreaty, that the gumashta of Mr. Scott, a merchant residing there, was permitted by the amil, late in the evening, to bring over a boat to carry Captain Gordon over. If this be the fact—and this fact is confirmed by two witnesses with Captain Gordon—you will expect that, if any account is given of this transaction which does not tally with the account given by Captain Gordon, the person so giving that false account had some mischievous conduct to conceal by it. Now we will see how they did explain this, what Shumshire Khan said for himself, and what the Begum said for him. This is the account that the Begum afterwards gave of this transaction:—

The Begum's account of the transaction.

"As the nulla, from its overflowing, was difficult to cross without a boat, Captain Gordon sent to the fousdar to supply him."

So that they admit that the faujdar was applied to:—

"He replied, the boats were all in the river, but he would according to order assist him as soon as possible."

Did he really? He never, during that day or at any other time, gave any reply or made any such excuse:—

"Captain Gordon's situation would not admit of his waiting: he forded the nulla upon his elephant, and was hospitably entertained by Shumshire Khan for six days."

All that is false; for, instead of that, he waits from noon to sunset, till all his corps desert him, his baggage is carried away, and part of it concealed in the house of this faujdar.

Now, there was no such reply as the Begum alleges in her excuse. She represents it as if the amil had recognised the

19 FEB. 1793. authority of the British Commander, and would obey his orders. Instead of that, no such orders are obeyed, nor was anything done in consequence of them; and Captain Gordon, so far from not waiting, waited from half after one till sunset that evening! But she says,—"he was hospitably entertained for six days." Was he so? He never received friendship, hospitality or assistance, from the beginning to the end. For six days! why was not he removed from this place in the course of six days? Your Lordships will be astonished to find that he stayed at this place many more days than six. He stayed there, in fact, not being able to go from the house without escort or protection, till a great part of the danger was blown over, and the Begum found it would answer her interest to assume an appearance of friendship to the English, and to convey this gentleman to Fyzabad.

Capt. Gordon takes refuge in the factory of the gumashta.

Insincerity of the Begum.

This happens on the 26th of September, at a place within six and thirty or forty miles of the Begum's residence. She knows of this on the 8th. From the 8th till the 17th or 18th of that month, being only distant forty miles at the outside, she permits Captain Gordon to remain in the factory of the gumashta—not hospitably entertained, for hospitality he never showed him—protection he never received from him—but he remained there in a situation of imminent peril for ten days, when our affairs began to assume another aspect, and then it was prudent and political for the Begum to exhibit some appearance of regard for our officers. What had happened in the intervening time? On the 11th of September, the Wazir had, with such forces as were with him, joined Mr. Hastings. On the 18th, Colonel Roberts had got with his forces to Mr. Hastings at Chunar. Mr. Hastings was then protected, and had a very adequate force with him. At that time, it was known that we were beginning to attack the strongholds and places of Cheyt Sing, for Pateeta was actually invested on the 20th. Mr Hastings was, at the time she sent this escort, in a state, to her knowledge, of comparative safety; and therefore it was very wise in her to assume, at that moment, an appearance of good will towards us, which, in the moment of our danger, she had not chosen to show.

Major Macdonald compelled to abandon his camp to Zalim Sing.

During this same period of time what happens to Major Macdonald? On the 10th of September, having had many of his troops seduced from him—he imputes, and justly, as I will show in evidence, that seduction to the people belonging

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to the Begum—Zalim, being a rebel chief connected with the Begums, within eight or nine miles of Fyzabad, comes to attack the camp of Major Macdonald. Not having a force to resist that attack, he is obliged to abandon his camp to him, and goes to form a junction with Colonel Hannay. As he passed along for this purpose, after his camp had been abandoned, and when some poor creatures who neglected to move in front of his detachment had been cruelly murdered by Zalim Sing, when the guns at Amorha had been fired upon this success, the guns at Fyzabad—the place where the Begum resided—acknowledged and returned the salute. At an elevated place the smoke could be distinctly seen, and the sound distinctly heard. But, that that might not be left upon the evidence of a person who might be mistaken whether there were such firing, an adjutant belonging to the corps of Captain Williams, having been out upon a furlough, returning at that time through Fyzabad, and being obliged to conceal himself in the habit of a fakir while in Fyzabad, so hostile was Fyzabad at that moment, speaks to the fact of the discharging these cannon upon that occasion, having himself heard them. This was on the 12th of September, which was the day when Major Macdonald was obliged to surrender his camp.

The capture acknowledged by a salute from Fyzabad.

It was insinuated by the honourable Manager that Colonel Hannay had been at Fyzabad during all this time, and had omitted to mention several of these circumstances. Colonel Hannay was not at Fyzabad at this time. If the Managers will have the goodness to refer to the dates in the correspondence, they will find, by Major Macdonald's own letter and Colonel Hannay's, that Colonel Hannay had left Fyzabad so early as the 10th. He had got to Rhy Ghat, where he was joined on the 12th by Major Macdonald, in the manner I have stated. My friend suggests to me it is proper I should withdraw an assertion I incorrectly made, that Major Macdonald was dead. I understand he is in India. Major Macdonald saw this firing; he heard the discharge of the cannon; he knew of several of his troops being seduced by the Begum's people. Oh! but that might be a mistake. They might be seduced by somebody else. It is a singular circumstance that, in an intercepted letter which fell into the hands of Captain Williams sometime afterwards, there is mention made of that letter which I have stated to be written to Adji Sing, subahdar in the corps of Major Macdonald, whom they state to be gained

Erroneous statement of the Managers respecting the position of Col. Hannay.

Attempts to tamper with the corps of Major Macdonald—

19 Feb. 1793. over to them, and that he, Adji Sing, might correspond safely with that traitor who had been so seduced, for that he was their friend. Was that verified by any subsequent fact? No; it is verified by an event antecedent; for at the time when this letter was intercepted by Captain Williams, which was on the 30th of September, that very fellow had run off from his corps! He had attempted to seduce two officers of Captain Williams, Denoo Sing and another man, and, having failed in his attempt to seduce them from their duty, afraid of the discovery, he had run off. And, therefore, at the time Captain Williams intercepted that letter signed by Jewar Ali Khan himself, which stated that he wished Adji Sing would give this assistance to him, that very man, so pointed out to him as a convenient associate, is represented as having attempted to corrupt the fidelity of other officers, and, failing in that attempt, as having left his corps. The letter is from Jewar Ali Khan: I understand the honourable gentleman said Behar Ali Khan before the House of Commons. It is immaterial which of the two names it is: it is only for the purpose of correctness that I mention it to your Lordships.

and of Col. Hannay. My Lords, about the same time that this attempt is made upon Major Macdonald's corps, Colonel Hannay's officers are attempted to be seduced, and one of the jamadars is applied to. Colonel Hannay, understanding he had been applied to, taxes him with entering into correspondence with the people of the zanana; for he understood from some of the people in the zanana that application had been made to his jamadars to desert him, and do all the injury they could to his force in that critical moment. The jamadar says that the thing alleged is true, as far as goes to the application—the offer to him, but that it was untrue as far as went to his giving way to it, for he declared he still preserved his fidelity to his officers. He mentions that other persons had been likewise applied to. Those other persons are questioned. They all admit they had been applied to, but all say they equally resisted the application.

The honourable Manager said it was very extraordinary that these men, who deserved so highly of the Company for their fidelity, had no other return made them than to bury their names and services in oblivion. I do not immediately refer to the particular language which was used by the honourable Manager upon that subject, but he said it was extremely extraordinary that that should have been the return which should be made for such extraordinary services,

and that we ought to have compensated it with the most distinguished reward; instead of which the names of the jamadars are not mentioned. 19 Feb. 1793.

Colonel Hannay assigns the reason:—

"The reason is, these men are to remain in the country when I may be gone from it; and to state their names in a situation of such danger might expose them to the resentment of the people of the zenana of the Begums and of all their connections."

And that, therefore, it was but due to the protection of this person who had informed him in the manner he had, not to reveal his name and expose him to these inconveniences.

Further attempts to tamper with the troops in the Company's service.

Captain Williams, in the course of his march, is told by a variety of people whom he had occasion to apply to, that they had received similar application from the Begum. A person who had the command of a force to the amount of 2,000 men states that he had letters from the Begum, but he did not attend to their application, and professes and actually discharges the duties of good faith and attachment to the English nation.

Case of the Rani of Bansi.

Another person—this is not in evidence before your Lordships, but you will hear it in detail from Captain Williams—the Rani of Bansi, whose son had been seduced by the application of the Begums to join in this confederacy, and who was commanding forces against us, she, anxious to protect her son from the attack of the English, on account of this improper connection he had formed with the rebellious people of Fyzabad, deprecates that attack of Captain Williams; desires he will forbear to attack this giddy and foolish young man who was led away by evil counsels; urging that, though he had been drawn aside from his duty to the Wazir and to the Company, she had been fixed in principles of attachment to the Company and the Wazir upon the best grounds, because she thought her safety and the safety of her house would be protected by it; therefore, she prayed that her loyalty might be imputed to her son.

Captain Williams likewise intercepted a variety of letters, a great part of which, for a reason he has assigned, he has destroyed. Marching with but an inferior force, having had mutinies repeatedly among his troops, being subject to attack, if afterwards his baggage had been cut off and these letters had reached the hands for which they were intended,

19 Feb. 1793. he would have acted the part of a messenger for the Begums, and have forwarded that mischief which the intercepting the letters meant to prevent.

Treachery of Mohammed Khan.

At the time when Major Macdonald's camp was attacked, when Colonel Hannay had been witness to these proceedings at Fyzabad, a person who was charged with a particular trust, Mohammed Khan, to whom he was directed by Colonel Hannay to look, and to repose confidence in him if he should have occasion ever to be absent from his corps—this man is corrupted by the Begums; and it appears that this chakledar—he is called—sends 12,000 rupees to three Rajas who had engaged in rebellion against us, and endeavours to defeat the march of Captain Williams by pretending that he could not get cattle to get on the baggage, thus delaying the march of the detachment; all the people at that time under Captain Williams, who engaged in this mutiny, crying out,—"We will take our guns and arms to the chakledar, and receive our pay from him; [for the chakledar is a servant of the Begum and we also are the Begum's servants] and Saadat Ali's." These people, in the moment of mutiny, are avowing that they had the same paymaster with this chakledar, who was detected in the treachery.

Another person, of the name of Doond Sing, states likewise this loan of money by the chakledar to the rebel Rajas; that he furnished the rebel Futtee Sha with 12,000 rupees; and that this discovery was made after the shuffling excuse that he could not get cattle to carry on the baggage.

An officer [Ahlaud Sing] who was stationed in the fort of [Goruckpore], where it appears he made a gallant defence, states that the people who were attacking them conceived that they were fighting the battles of the Begum, for they cried out, "Lay down your coats and disperse yourselves. We will march to the Begum;"—and that the Begum would pay their arrears. The people who were attacking Ahlaud Sing cried out that they had the warrant of the Begum and Saadat Ali for what they did.

When you find people in arms attacking our ally the Wazir, his troops being under the command of British officers, and the persons making this attack avowing written orders from the Begum, and knowing that to be her pleasure, can you doubt that these acts were done, not only with her connivance, but with her perfect authority and approbation?

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Rewards offered by the Begum for the heads of British officers.

So persuaded were the people of the country that all these tumults were excited by the Begum, that persons who were most connected with the British nation by exercising any trusts under them, those who were most connected with the executive government of the Wazir, and in any manner connected with the British officers, fled; for it was publicly declared that the Begum would give a reward of a thousand rupees for the head of an officer, and a hundred for any sepoy, and ten for any ordinary person connected with the English. This is announced. A parwana to this effect is intercepted. A person under command of Captain Williams intercepted a parwana or order from the Begum announcing she would pay this reward.

Denoo Sing, who was an officer under Captain Williams, states, that he had in the course of his march seen the pargana amil, or the collector of the small districts, who had fled for refuge to a tomb or mausoleum, understanding that the Begum had denounced her vengeance against all persons connected with the English. So deeply were they linked in this mischievous confederacy with the Begum, and so convinced they were acting under her pay and authority, that, even after the sepoys—who had mutinied, as it should seem, upon a pretence that they wanted their pay—had received their pay, they still declared they were under the command of the Begum, and would deliver up their guns and arms at the gate of the Begum.

Another officer states that it was declared to be the order of the Begum to give a reward of a thousand rupees for the head of an Englishman; a hundred for a subahdar; and for a sepoy ten. The constant language—and that proves that what Major Macdonald represents had been the plan to prevent the junction of the British forces—the constant language everywhere is—"Give up your baggage, your arms and your coats, and go naked where you please." It was at that time very perilous to wear that uniform, that marked them out to belong to or have any connection with the British force.

Perilous position of the British at Fyzabad.

Captain Williams states that [a sepoy] venturing into Fyzabad with his uniform was put to death in the open streets of Fyzabad; that his servant was stopped because they knew he belonged to him, and beat because they knew his connection with Captain Williams and the English in that country; and that his adjutant and several other officers stripped off their clothes, and put on the habit of

19 FEB. 1793. fakirs, in order to screen themselves from the like peril to which the English had been exposed at Fyzabad.*

Withdrawal of bearers by the ministers of the Begum.

Captain Williams applied to Hoolas Roy, the person who went between our officers and the people of Fyzabad, for bearers; who told him the bearers that had been ordered for him were taken off the road by the express orders of Behar and Jewar Ali Khan; which he found true, for, when he got out of their territories, he found the bearers that had been ordered were ready, and he was conveyed on by these bearers there, though he could not be by the bearers in the Begum's territories.

Attempt to discredit the evidence of Doond Sing.

My Lords, in commenting upon the testimony of one of these witnesses, an honourable Manager indulged himself with a considerable degree of pleasantry †—I mean a witness of the name of Doond Sing; and your Lordships may recollect he has been described as "the triple swearer," as "the person who swore three times!" The honourable Manager said, after having tried his hand to hit the mark twice alone, then he indulged in platoon swearing, and then he comes up to the mark. He has stated that this man first had made an affidavit which had nothing in it. The affidavit which he states had nothing in it was applicable, to be sure, to Cheyt Sing, and Cheyt Sing only. Therefore, it had nothing in it which bore reference to this Charge. He, on the 26th of November, makes an affidavit that, in the February preceding, he had some application made to him on the part of one Sujan Sing, a brother of Cheyt Sing, to be attached to him and leave the service of the English.

His two affidavits.

Confusion of two persons named Doond Sing.

In the second affidavit Doond Sing makes—for your Lordships are not for a moment to believe that there are three affidavits made by the same man. That was a mistake into which I cannot conceive how the honourable Manager could fall, because it is a mistake into which no man in the fair exercise of his reason could fall. Therefore it is almost injurious to the character of the honourable gentleman to suppose he has fallen into the mistake; and, therefore, I do not know, with perfect respect to him, how to elect, whether he should be mistaken, or have perverted the truth—the mistake is so gross. Doond Sing, who was

* Evidence of Capt. Williams; printed in the "Minutes of the Evidence," p. 1925.

† See the speech of Mr. Sheridan in summing up the evidence for the prosecution, on this Charge; vol. i. p. 557.

a part of the corps of Captain Williams, [it is] said explicitly —This is no possible mistake. It cannot be easily mistaken, without a sudden perversion of reason in the honourable Manager, of which there was no appearance, had come over him at that time. But he states, that Doond Sing cannot write in the first affidavit; in the second, he makes a mark; in the third affidavit, he has learned to write and read, and signs a name and fires a platoon with another man of the name of Mir Ahmed Ali. 19 Feb. 1793.

Now, this Doond Sing is not only a different man, but of different rank in the army! And, unfortunately for the gentleman's proposition, the two men were a hundred miles asunder upon the 7th of September; and it is impossible for any man endowed with human reason, distinctly reading these affidavits, not to know that one Doond Sing was an officer, a commandant under Captain Williams, on the 7th of September, enduring all the inconveniences of the mutiny that took place on his march from Gongoor to Burragong, and that the other Doond Sing was a subahdar under Captain Gordon at Tanda, a hundred miles from the place where the other was, and who was speaking to the facts that happened in the opposition that was made to their crossing the nulla. Their different ranks in the army.

It appears perfectly unaccountable to me how the honourable Manager could fall into that mistake—not an honourable Manager who looked lightly into his subject. The abundant pains he had taken, the abundant eloquence he displayed, the abundant information he had acquired, all repel the idea of negligent mistake. And I cannot resort to the other supposition without a violation of that respect which I am necessarily bound, standing here, to entertain for the honourable Manager and every word he utters.

Now, I only desire your Lordships would take the trouble to look at the two affidavits, to see if it could be possible that anybody could, without a strange, miraculous, perversion of the understanding, make such a mistake. The two first affidavits that are made by Doond Sing, commandant, who belonged to the corps of Captain Williams, are in pages 237 and 238; and that which is made by Doond Sing, subahdar, the man who can write, and who belongs to Captain Gordon's battalion, is in page 245. The first affidavit is immaterial to this subject, because it relates merely to Cheyt Sing. The second affidavit, which is in page 238, is material. It is the translation of the deposition of Doond Reference to the affidavits of the two men.

19 FEB. 1793. Sing, commandant, who, not knowing to write either Persian or Hindi, had made his mark.

Deposition of Doond Sing, commandant.

Perhaps there is nothing about dates; or, perhaps, it may be said that they are Persian or Hindu dates, and, therefore, the honourable Manager might fall into the mistake. No; that will not do! It is in English. The 6th of September is the day mentioned here. I beg your Lordships will have the goodness to cast your eyes about ten lines down that affidavit, and you will find that, at nine in the morning, on the 6th of September, he, Captain Williams, marched and came to the bank of the river Khaukhi. You recollect that the 7th was the time when Captain Gordon's misfortune happened. The man I am now speaking of was with Captain Williams. After twelve o'clock at night, the same day, the 6th, he says—"I made my report to the Captain in the morning:"—that must necessarily be the 7th:—"we marched a small distance towards Burragong." Then they assembled at Kunkooa the next morning, which must of course be the 8th of September. And thus I have conveyed him from the 6th to the 8th. It is a regular detail of the miseries that befell Captain Williams in his march from Kunkooa towards Burragong. It contains the whole history of these three days, and that he was then with Captain Williams.

Now look at the affidavit in page 245. That says:—

Affidavit of Doond Sing, subahdar.

"On the 7th of September"—

part of this very time: no Indian dates!—no opportunity of mistake!—

Mr. Gordon, with four companies of sepoys and a hundred horse of the Russauleh of Ruzza Beg Khan, did march from the Ghaut of Jehoora towards Taundeh."

Then he speaks of their arrival at two in the afternoon. Captain Gordon states it to be about one. Therefore, I have placed these two persons, whom the honourable Manager states to be the same, at the distance of a hundred miles from each other in precisely the same point of time! Now, I will leave it to the honourable Manager to reconcile it to candour or to fact;—for I suppose he can. I am to suppose every thing to be done with the fairest and purest intention. I have involved the honourable Manager in an inextricable contradiction. I will say no more, but leave him to get out of it as he can.

I will now advert to another passage in the evidence

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before your Lordships, which, I do think, transcends anything I can say. It is enough to state the fact; and, if your Lordships recollect in history—if any person who has been present at trials recollects—anybody having done these sort of things, I will admit the honourable Manager has fairly and honourably adopted that precedent. Now I am sure I do not wish to say anything improper and disrespectful, but, if it was done by any of us in the ordinary lines of the profession, it would be considered as a species of judicial legerdemain. I do not know any other name to give it. I will show your Lordships how a question was asked about one treaty and a clause read out of another, and the witness confounded and completely put out of countenance, and the credit of that witness most unjustly disposed of. God forbid anything should be taken upon my assertion! If it is not as clear as the light of the sun that shines upon your Lordships that this perversion has been made of the testimony, let all my observations go for nothing, and let the honourable Manager be deemed one of the most fair, as he certainly is one of the most eloquent, persons ever employed upon such a subject. It is as applied to Mr. Middleton.

Perversion of testimony in the case of Mr. Middleton.

It is in page 517. Your Lordships will have the goodness to look at those words, at the bottom of page 516:—

"Copies of several treaties concluded with the Nabob Vizier, with his mother, that is, the Bow Begum, and Mr. Bristow, etc., as guarantee to them."

Nobody can doubt upon reading the title that it was not a treaty with the elder Begum, but with the Nawab's mother, the Bow Begum. If you look at page 517, the next page, you will find this clause in that treaty, or proposed treaty, whichever it was.

"Moreover, his Highness shall not at any future period make demand of a loan or any other demand from her Highness."

"Her Highness" must necessarily mean the mother. Nobody can have any doubt of it. The treaty at the beginning shows that it was with the mother. The whole subject shows it was with the mother.

Now we will turn to page 520. The honourable Manager puts this question to Mr. Middleton.

"Whether there is not any clause whereby the Nabob binds himself to demand no loan of the elder Begum?"

Mr. Middleton says, as he said truly:—

"No; I do not recollect it."

19 Feb. 1793. Then the honourable Manager, for what purpose of truth or justice let him explain, read to him a passage out of the treaty with the younger Begum, as if it had been the treaty with the elder:—

"Moreover, his Highness shall not at any future period make demand of a loan or any other demand from her Highness."

And he reads it to the witness as if it was a paragraph in the treaty with the elder Begum. Mr. Middleton, not having, as your Lordships must have observed, a great deal of presence of mind, was perfectly confounded. He sat down as convicted of the grossest falsehood; and the honourable Manager had a temporary triumph in the show of that conviction.

Now, at the distance of five years, the matter is set straight. Did Mr. Middleton impose upon your Lordships, or who did? I have no right to urge this against the honourable Manager. He is answerable to his own conscience if he has done anything wrong in this prosecution; he is not responsible to me. But I will suppose it error. Then, how is he warranted in those heavy denunciations against Mr. Hastings, in those cruel observations he has made on mistakes, in the course of a correspondence of thirteen long years together? Now, if in the course of his life Mr. Hastings has been guilty of anything which so perverts the fact before him—my Lords, I implore your condemnation of him!

My Lords, I have stated in substance—and I should waste much of your Lordships' time, I am sure, if I went into further detail of it—evidence which is already before your Lordships, and part of that evidence which we shall further adduce, in proof of the actual hostility of the Begum. We will produce to your Lordships all the evidence that can be required of honest and candid men; we will produce all the persons, immediately on the spot, who had the means of observing and knowing whether the Begum was guilty of the acts imputed to her. They will speak to their own sense and knowledge, confirmed and corroborated by the sense of the whole country.

Question of the Begum's guilt.

If your Lordships can believe that no levies were made or troops sent, notwithstanding what Colonel Popham and those other officers have said of the najibs appearing in arms and avowing their pay—if you can believe that it is not true what Major Macdonald has said of cannon being discharged

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at Fyzabad at the time when his camp was taken, and that in that manner his enemy was congratulated upon dispossessing the British force of its station—if you can believe that all that Captain Gordon has said of what passed at Tanda is not true, but that the story is true as told by the Begum, that he waited a little while, that he was impatient, and went over upon his elephant—if you can believe that all these people of the country, speaking of the parwanas of the Begum and denunciations of vengeance upon every person connected with the British name, are false, and that the amils had no means of knowing what the intelligence circulated through the country was; that this man fled to this tomb without any fear—then the only question will be, whether Mr. Hastings had an adequate reason to believe them true or not. But I trust your Lordships will believe, not only that he had sufficient reason to think as he did, but that at this moment the credit of that testimony has not been impeached in an iota; but that she was and is guilty of gross rebellion against her son and sovereign, and of manifest, violent and outrageous, acts of hostility and injury to us.

Mr. Hastings' belief of it.

In perusing those affidavits, in taking of which Mr. Hastings' orders certainly were not obeyed—no person gave out the precise points to which, if they knew anything on the subject, they should give their testimony, but they were loosely desired—and so the officers will tell you—to tell all they knew about the substance of the disturbances, and each man begins making himself the hero of his own tale—the undesignedness of the different relations appears from their little variations; but their general accord in the substantial points which respect to the conduct of the Begum places them upon the most solid foundation of credit. It is not every little variation that weakens the credit of testimony: it confirms it. And that adds, among other circumstances, great confirmation to that testimony upon which all our hopes of happiness depend.

Forfeiture of the guarantee by the Begum.

My Lords, it having thus appeared to Mr. Hastings, and I trust it will fully appear to your Lordships, that there was sufficient reason to consider the treaty entered into between the British Government and her, by which they were made guarantees for the protection of this lady against the claims of the Wazir, and [Mr. Hastings] having reason to conceive that in consequence of her conduct that was put an end to, his rights, or rather, the rights of the Company to be enforced by him, revived in full effect. Her funds

19 FEB. 1793. became again open to these demands, to be prosecuted in the name and on the behalf of the Wazir, to whom these funds became restored by her being guilty of a breach of duty in respect of her sovereign, which forfeited her right to these treasures. Being guilty of a breach of duty in respect to us, that forfeited her claim upon our intervention. The moment that we were freed from that guarantee, and she had no longer a claim upon us, we stood, as did the Wazir, in our original unpledged situation. She had forfeited all claim to extraordinary favours from him. She had forfeited all claim to our protection. We had a right to demand of the Wazir, that he should enforce against every fund which was within his control and reach the full rights he could claim in respect of them, in order to enable him to pay our debt; and he had a right, as against that fund, to use it for the purposes to which it ought to have been originally applied at the beginning of his reign, instead of that fraudulent bargain having been made which intercepted the just rights of the Wazir, and precluded him from his proper resort to these treasures for satisfying the public debts. The greatest part of the distress that fell upon the country of Oude would, then, never have happened: the greatest part of the distress which fell upon us, for want of these funds, would have been avoided. However, when she so offended against us, we had a right to demand that the Wazir, out of that fund now so laid open to him, should satisfy our debt.

Lapse of the treasure.

Subject to the claims of the Company.

Willingness of the Wazir to seize the treasure and jagirs.

If, therefore, we did what the Article asserts, and which the Managers have attempted to prove, but which they have failed in proving—compel the Wazir to resume them—if we forced a performance on his part of a duty which it was now in his power to perform, I conceive upon every fair principle of justice we should have been warranted in so doing. But your Lordships have heard from Mr. Middleton —and it is indeed confirmed by the whole evidence in the cause—confirmed likewise by evidence from Mr. Bristow— that, from the first to the last, the Wazir had never any unwillingness to seize the treasures of his mother, which he conceived to be his own, or the jagirs, but from his unwillingness to resume the jagirs he had granted to his unworthy favourites. Mr. Middleton, in his evidence upon that subject, which is conformable to the whole evidence in the cause, says:—

His scheme of partial resumption

"When the Nabob so earnestly desired my sanction for a resumption of the jaghires, he certainly had in view only the Begum's and a few

others of magnitude, which he considered protected either by the guarantee or favor of the Company. He could not be supposed to ask my sanction to the resumption of grants in which the Company's faith was by no means concerned. But, being aware that his excellency intended a partial resumption, reserving the jaghires for his particular favorites, who from their character and conduct ought to be the first proscribed, I determined to defeat the design by advising him to make the resumption general."* 19 Feb. 1793.

defeated by Mr. Middleton.

He afterwards says:—

"His objections I never conceived to be to resuming the jaghires of his mother and grandmother. I must make the same observation with respect to that as I did to the seizing the treasures—that I am very sure that there was no period during my residence at which he would not have done that also, but he would probably have given them an equivalent. They were a perpetual cause of quarrel. He wished to have redeemed them, and would have done it, unless we had prevented him. The objection probably arose from the resumption of other jaghires of persons to whom he was personally attached. That is my opinion." †

Reluctance of the Wazir to the general resumption of the jagirs.

Now, my Lords, such being the disposition of the Wazir with respect to those favourites, how came it, you will say, that any objection should be made to the resumption of the jagirs of his mother, to which he seemed, as Mr. Middleton states, to have been always inclined? Those unworthy favourites, finding that, if the resumption was to be general, and to begin with the mother and so go on, there would be no possibility of preventing the resumption as to themselves, advised him to make a stand, in the first instance, upon the jagirs of his mother and grandmother; thinking that would have a better appearance, and that he could make a more legitimate ground of resistance to the request that should be made in respect of those jagirs than of others.

But so far was the Wazir from being actually a convert to this persuasion, that, at last, when Mr. Bristow, in the year 1782, was for withdrawing the battalion which was stationed there for the resumption of the jagirs, at that very time, to the last moment that they were there, does the Wazir urge their continuance; and he is extremely averse to the withdrawing the battalion. What if he had been at any time induced, by a sort of compulsion on our part, to have yielded his assent to this resumption? We, who had

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* The passage quoted is not from the evidence of Mr. Middleton, but is taken from Mr. Hastings' Defence at the bar of the House of Commons.—Printed in the "Minutes of the Evidence," p. 711.

† Evidence of Mr. Middleton, "Minutes of the Evidence," p. 710.

19 Feb. 1793. claims upon his funds, might have enforced with strong persuasion, and even almost to the effect of compulsory measures, the resuming the treasures. For what had these persons been guilty of? They had put themselves, as it were, in a state of war with us. We might have justified, if he had not given up their treasure for the payment of our debts—we might have justified acts of hostility against him, in a way of reprisals for injuries done by his subjects. Instead of that, we accept the commutation as a commutation of payment of a just debt, due long before this, which he had a right to have paid out of the funds now laid open to his just claims; and that we accepted as a commutation for their criminal conduct, during that period when the fate of the British nation tottered to the verge [of ruin].

Commutation of debt accepted by the Company.

Charge of unnecessary harshness in seizing the treasure.

It has been a matter of blame that, at the time when Mr. Middleton was sent up to Fyzabad to enforce the delivery over of these treasures, Mr. Hastings complained of the delay and forbearance, and seemed to express doubts of the agents employed upon that occasion; and, as the honourable Managers would represent him, he appears to have been very harsh and merciless in the execution of this necessary command.

Motive for promptitude.

The whole of Mr. Hastings' conduct is easily resolvable into a very different motive. Mr. Hastings knew that, if there was delay, if there was protraction,—in the first place, it might occasion, as it partly did, a degree of force; and that the most merciful thing was, to take care that that should be done immediately which was necessary to be done at all. He therefore ordered it to be done peremptorily, and that there be no delay. The delay that was occasioned caused the assembling of 1,000 men. Fortunately they were dismissed without bloodshed; but Mr. Hastings knew that, upon a former occasion, in 1775, the treasures of the Begums, and the rights of the Nawab, had been compromised for a comparatively insignificant sum, that the treaty had been drawled on from the 6th of March, when Mr. Middleton began the treaty with the Wazir, till the 15th of October, and that the Wazir got but about a fourth of his right. Mr. Hastings resolved that whatever was obtained should be obtained, in the first place, for the Wazir, and, in the next place, for our benefit, whose debt was to be satisfied. And it was in that sense that the gentleman to whom Mr. Hastings wrote understood the complaints to be made.

Ill consequences of delay on a former occasion.

Mr. Hastings says :—

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Letter of Mr. Hastings.

"The agreement which I concluded with the Wizier has served not only [to gratify revenge] or some concealed interest." *

He suspected the persons employed might have some concealed interest to answer. The gentlemen purge themselves of that; they certainly, therefore, understood at what his objection to delay and forbearance pointed. They knew that he meant that that would open a door for dangerous negotiation; that he wished to shut that door and prevent that negotiation, and secure to the Company all the benefit that could be derived from the recovery of treasures so long alienated from their original proprietor. This was a season when, I think, one would not have been inclined very much to quarrel with the precise phrase of a letter; when Mr. Hastings, if he was impatient, had ground indeed for impatience, for he had at that moment several armies that looked up to him for their pay and subsistence. The only source he could find for this was in the discharge of the Company's debt; and, if he had been harsh at that moment in demanding the payment of that debt, nobody, when it was referable to such a motive, and such a motive only, would have quarrelled very much with the phrase and language that might be found in a particular letter of injunction to a servant employed under him. And, as to the idea which has been suggested that this formed a part of that present of ten lacs which has been received and applied to the Company's use, as has been insinuated.—The first money received was on the 25th of January; and on the 20th of January, five days before, Mr. Hastings had stated, that, of that present which he had received from the Wazir, it had been tardily realised, but a part had been received ; and he announced to the Company that he had already applied it in their service, and in a way that Mr. Larkins—a gentleman beyond all question in point of credit—says that he, as accountant, must know from the issues to the army that Mr. Hastings had received an extraordinary supply, and applied that extraordinary source, independently of the information he afterwards received from Mr. Hastings himself upon that very subject. And, therefore, it is by no means referable, without a strain of perversion such as that of which we have had some instances, to the Begums; nor had

Necessitous condition of the Company.

Distinction between payment of debt to the Company and present of ten lacs.

* Letter of Mr Hastings to Mr. Middleton; 1st Jan. 1782.—Printed in the Appendix to the "Minutes of the Evidence," p. 94.

19 FEB. 1793. anything to do with the Begums, till long after it was put in application to discharging the military distresses of the Company.

Harshness of expression on the part of Mr. Hastings.

If any body should think there was any degree of harshness in the expressions, let it be considered that Mr. Hastings had to sustain, from the supplies of Bengal, an army that was lately come down under the command of Baillie and Fletcher; to oppose that to Hyder Ali, to the vigour and activity of Tippoo Saib, and the whole force of the Mysore dominions. He had, by a prudent measure, detached Madaji Scindia from the general Mahratta confederacy: he had gained some advantage under General Goddard; but he had to sustain all the forces we had against the Nizam, Hyder Ali and the Mahrattas; and, at the same time, to find resources to pay the army, then many more months in arrear than ever it had been since Mr. Hastings had been in the Government, or ever before, or since we had a footing in India. And, therefore, to be picking and culling phrases in such a situation is not a [just] mode of accusation, unless an unworthy motive could be brought home to the gentleman using that language in that letter, to an agent whom, from delay, he began to suspect of not duly performing the trust with which he had invested him.

It is hardly worth while, in the course of this Article, inasmuch as it forms a substantive and more distinct charge under another, to advert more to this subject than we have done. In the next Article, of presents, it will be to be considered more distinctly and more pointedly. But I would just insinuate that this is a kind of new scheme Mr. Hastings had hit upon—to be hiding the spoil of his corruption in the pockets of the soldiery; to be making the Company whom he has defrauded the confidants of his guilt! It is a new mode of corruption, and of which, I believe, he is the first inventor.

Contradictory charges respecting the debt of the Wazir.

This money, which is obtained from the Begums, it is said, was to be applied to the satisfaction of a pretended debt. Pretended debt! Good God! in the year 1783 it was clamoured through this country that there was a debt justly due to the Company, from the Wazir of Oude, of an enormous and desperate magnitude, and that Mr. Hastings was criminal in the extreme, because there was no hope or chance of bringing a penny of that money into the coffer of the country. That which was desperate he has not only made sperate, but he has realised, and it is in your coffers. A small part, that remained at the expiration of Mr. Hastings'

government, was received in the government of Sir John Macpherson, but the bulk was received under his own. Now the mode of charging him is altered. He is no longer a negligent financier, but a too rigorous extortioner. It is a pretended debt: every penny received is extortion; and the honourable Managers who framed this Article are perfectly prepared to vote and advise that this money, which was taken under a pretended debt, should be returned to the Wazir. They are ready to give back these fifty lacs; it being a pretended debt! All your tables are loaded with proof of it. You will not suppose that anybody can doubt the debt, being given in from time to time, liquidated and acknowledged on both sides. But the word *pretended* is so used by the honourable Manager that it almost always prefaces a true allegation. "They say under pretence of a war!" Was there no war in 1778? The war immediately after that pretence raged in every part of the British dominions; convulsed every part of it. It is all pretence—this debt for which we were dying, as we were told, for reasons of state is all a pretence! Of what strange, equivocal, contradictory, accusations has this gentleman lived to be the victim and the martyr!

Various pretences imputed to Mr. Hastings.

It is said likewise—"from wicked and frivolous pretences." The pretence is a war. Is the pretence false? I am sure I have wasted some hours of your Lordships' time in vain, and have abused your more enlightened minds and my meaner one in endeavouring to prove the thing, if I have not proved it. False pretences! Why, it is a falsehood in which all India conspired—a deception common to them all. Malicious! It cannot be malicious if true, because it is certainly a very adequate ground for all the measures taken in consequence of it. And as to frivolous—it can only be unimportant to those to whom the safety of their country is perfectly unimportant; and, therefore, Mr. Hastings has not attracted justly the resentment of his country for any of these measures. He can be, and is, only an object of resentment to those whose calculations he has made futile, whose predictions he has falsified, whose counteraction he has resisted and overcome.

Injustice of the imputation.

It is urged that it is extremely wrong that all this should be done without even the form of a treaty;—that Mr. Hastings should transact this business of resuming the treasures. Resuming the jagirs? That was under a treaty: the objection does not apply to that. Resuming the treasures and

Alleged necessity of a treaty for the resumption.

19 FEB. 1793. resuming the jagirs without the form of a treaty! What treaty was requisite? The old one that protected them was dissolved, and they fell into their old situation; and there was nothing to be done but to collect, on the part of Mr. Hastings, if he wanted the debt to be paid. There needed no treaty; therefore the form of a treaty would have been perfectly frivolous, if any such form had been adopted upon this occasion. If, thus circumstanced, the Wazir had chosen to resist or had been unwilling, it would have been a circumstance to communicate to him—the guilt of this rebellion with which his mother and grandmother were infected. It would have been establishing evidence of his actual participation in that treason, when he was so unwilling to enforce the most necessary and lenient consequence of it;—for, before I leave this hall, your Lordships will know that those ladies never were reduced to any state of distress. They are at this moment, I believe I shall show to your Lordships, the richest matrons in the known world.

Present affluence of the Begums.

Necessity for the employment of force.

It has been considered as rather harsh that any force should be sent. Was not a force necessary? Hear only what the Begum had denounced. It was only to prevent her using a force that would have been useless to herself in the result, but might have been mischievous to both herself and others, that a considerable force was sent up by Mr. Hastings, to overawe and prevent any attempt to resistance. The language she holds is this:—

"Should the country be lost to me it shall be lost to all. No soul shall be able to remain in it at peace."*

Perfectly the language of another Dido! The same imprecations; the same denunciation of vengeance to the people that live in the country after she had left it! Her hatred to the English was first manifested when Suja-ud-Dowla set out for the battle of Buxar: she said—"Reserve of them sixteen men, the best of them, to walk before or bear my palanquin." Sixteen were all that were to be left in India; at least, all that were for the parade of this lady.

However warm and resolute the feelings of the Bow Begum might be, they had received an extraordinary degree of heat and inflammation from the elder Begum; Major Gilpin's account of whom you heard here, and whose testimony made an impression which cannot be easily effaced. He said, he thought she was the more violent of the two;

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* "Minutes of the Evidence," p. 315.

and his opinion of the violence of the other was a little weakened by the letter written by Captain Gordon and Colonel Hannay about the 18th of September, 1781, after they had been conveyed from Tanda to [Fyzabad.] These letters I missed in their proper place: I advert to them now. Much reliance was placed upon this, that Captain Gordon and Colonel Hannay had written letters of compliment to the Begum and the eunuchs, acknowledging thankfully their civility and kindness in escorting Captain Gordon from his imprisonment at Tanda, where he had been ten days, and conveying him safe to Fyzabad, and Colonel Hannay from Goonda.

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Letters of thanks from Capt. Gordon and Col. Hannay to the Begum.

Captain Gordon will state to your Lordships, that he wrote these letters considering at that time that he was far from secure; that he wrote them as a mere temporising expedient; not conscious—for he was not conscious—of any real solid obligation received from these ladies. Colonel Hannay certainly was not conscious; who knew that the people of her own zanana had been endeavouring to corrupt his officers. Captain Gordon says, he thought he might still be in danger of a person whose power he had found sufficiently in the business at Tanda. The letter was written by a munshi. He states one thing which is singular enough. Captain Gordon says:—if these be the genuine letters which are subjoined to the Articles in the House of Commons, to which Mr. Hastings having answered, your Lordships may recollect that it was only by reference to the answer they were made any sort of evidence, so as to be read here. After some debate they were held to be evidence only of the lightest sort:—He states this:—

"My letter to the Begum thanks her for having assisted me to go on; and that I had met the colonel"—that is Colonel Hannay—"at Goonda. Now"—says he—"I never was with Colonel Hannay at Goonda. I had never been there after I had been at Fyzabad."

It makes him no further responsible for the particular language of the letter than as he ordered it to be a letter of thanks. For that he is responsible. But the particular terms in which those thanks are conveyed do not attach upon him, from the circumstance of this mistake, which shows it the language and composition of another. But, if your Lordships advert to this letter, you will find three more written by Colonel Hannay to the eunuchs, and one by him to the Begum. [These] are writen prior to the time of Captain Gordon's deliverance from Tanda. They are written

Letters of supplication from Col. Hannay to the Begum.

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in language expressing such a degree of humility as does not usually occur in the correspondence of the people of this country with the people of that; and no letter will be found addressed to the people of that country, in the letters before your Lordships, in language of such humble supplication and prostrate humility as these letters. That shows they were written by a person to another who has it in his power to do him a material injury, and which injury the writer of that letter apprehends he will do him. They are letters of supplication; not such letters as would be written by a person in so high rank in the service of the Company as Colonel Hannay, to a person to whom he would rather have written in language of command and order than of humble supplication—which is the language, you will find, he has used upon this occasion.

Surrender of the eunuchs to the Wazir.

When this force, which was, under the circumstances that I have stated, necessary to be sent by Mr. Hastings to Fyzabad, appears, and after the troops of the Begum were dispersed—finding it would be impossible to encounter the sort of force, the eunuchs surrender first to the Wazir, their sovereign, and by him were transferred over to the British commander upon the spot. They then, in order to make a commutation in a civil form for their criminal offence, entered into security to pay the debt due from the Wazir to us—fifty-five lacs, to be liquidated by the Begum out of the treasures she then had. The Wazir first demanded 100 lacs. He had a right to demand the whole. However, he went away before the treaty was brought to a conclusion, and those persons entered into security for the payment of fifty-five lacs. Of these but fifty were paid; and, while part was in a course of liquidation, and till the rest were paid—five lacs never were paid—they were retained in custody.

They are handed over to the British commander.

Charge of cruel treatment.

The miseries these men endured have been the subject of eloquent declamation by the honourable Manager. Now I will state what appears upon the unquestionable testimony of Major Gilpin—whose evidence, I believe, no one heard without giving implicit credit to it—and Captain Jaques. It appears, instead of being thrown into a prison and a dungeon, that the prison they were thrown into was their own palaces. These men resided, first of all, in the palace of Behar Ali Khan. But, that not being sufficiently commodious for the luxury of Jewar Ali Khan, who had been used to live in a better house, they were transferred to hi house. They had the command of the most magnificen

palace at Fyzabad, upon the building of which Jewar Ali Khan had recently bestowed a large sum. They had a range of very extensive gardens; had every luxury of attendants. They had at least forty servants. They were unrestrained in every respect, except as to their personal liberty, that they might not go from that place. 19 FEB. 1793.

But it will be stated that they had fetters on them. And I know that, though fetters of but two pounds weight, that sort of restraint is galling to the nice feelings of British ears. But your Lordships must recollect to whom they were applied, and what they had done to a creditor of their own. At that time, Ram Loll, a banker, was released from irons in which they had put him for twelve months for a civil debt. They had confined him, a principal sarraf in that country, notwithstanding there had been offered, as securities for the payment of his debt, the security of Gopal Doss and the security of the British Resident. And it was not till after they were confined in this manner that Ram Loll got his discharge. It is not a subject to comment upon—the weight of these irons; but it does occur to one to recollect that, when a friend of a late eminent moral writer was brought to the bar of an English court of justice—Savage—he came up with twenty-five pounds of irons. There were but two pounds upon these men, who had committed treason upon treason against the British nation, and attempted to devote to destruction every man who was connected with the British name in that country.

These men were confined about eight months, in the whole. They were threatened with the infliction of the resentment of the Wazir, who had several times before threatened to punish them heavily; and that was the main part of their punishment. That is all the evil they endured; for, as to bodily infliction, they endured none. They had committed crimes, over and over again, that would have warranted the infliction of capital punishment; but, further than the mere confinement of their persons in the manner I have stated, no punishment was inflicted upon them. They were released in eight months, when Mr. Bristow came up into the country. But it is stated by the honourable Manager that they were actually punished and flogged in the streets of Lucknow. That fact exists only in the assertion. That punishment was never inflicted. There is no document before you which would induce a reasonable

Their release after eight months confinement.

19 FEB. 1793. belief that it was; and it exists merely in the unvouched assertion of the honourable Manager who stated that fact.

State of the Begum's finances.

As to the inability of the Begum to have paid this sum which was demanded of her, I will only now state what were the sums she paid from first to last, and what was the state of her treasures. Mr. Bristow represents that they were from four krors to 170 lacs. Take them at the least—and there is no witness who has been here will venture to put them at so little as 170 lacs—take them even at that. She is stated to have had an annual income of eight lacs a year. That she had it Mr. Bristow proves, who, at the time of the resumption of the jagirs, had it in charge, and it was productive to the amount of eight lacs a year. It appears, in the 16th page of the Appendix, that she told Mr. Bristow that her expenses amounted to 1,200 rupees a month, which is short of one lac and a half a year. Therefore, she had a surplus accumulating of six lacs and a half a year, from 1775 to 1781, when this seizure was made. Having accumulated, upon that calculation, thirty-nine lacs, in addition to the sum of 170—which I take them upon computation to be, though they were infinitely more—she agrees to pay fifty-six lacs to her son. But of that four were not rendered, so that it came to be fifty-two; and, of the fifty-five agreed for in 1781, only fifty were actually rendered. So that she had paid, in the whole, 102 lacs out of 209, which would leave her a surplus of 107 lacs, after making both these payments.

Sums paid by the zanana.

But there is one thing singular enough: not a particle of this money appears to have come out of her own house! As it is stated, all was got from the houses of the eunuchs. Therefore, upon the zanana doctrine, this would not have been protected. If this was the treasure of Suja-ud-Dowla, it would have belonged to the Wazir, independent of the sanctity of the zanana. But, however, there is a surplus of 107 lacs, after making both these payments. This is not that very extraordinary degree of distress and pecuniary want which is very apt to attract our compassion; nor is the sort of suffering of these eunuchs for eight months in this confinement that sort of punishment which, from its extremeness, much affects one's sense; when we consider these eunuchs had been aiming at the destruction of the interest of this country in India.

of the measures resorted to.

The only topic of any considerable magnitude that re-

mains to be considered is the distresses of the Khourd Mahal. And, if there ever was anything that was unjustly brought in charge against Mr. Hastings, which had no reference whatever to him or any act of his, it is that part of the Charge which respects the distresses of the Khourd Mahal.

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Charge respecting the distress in the Khourd Mahal.

It is stated, that the seizure of these treasures of the Begums,—

"was the means of reducing the mother and grandmother of the reigning Prince of Oude to the utmost distress, under the pretended authority of the said Prince, and of reducing the women and children of the late Nabob Sujah ul Dowlah, dependent upon the said Begums, by want of the mere necessaries of life, to break through all the principles of local decorum which constitute the character of the female sex in that part of the world, and, after fruitless supplications and shrieks of famine, to endeavour to break the inclosure of the palace and force their way to the market place in order to beg for bread, and, finally, to submit to the extremity of disgrace and degradation by exposing themselves to public view with the starving children of their late sovereign."

Limited responsibility of Mr. Hastings.

Now, my Lords, the fund from which they were to be maintained was in no respect whatever under the control of Mr. Hastings; nor was it dependent upon the Begums. It was perfectly unconnected with either of them. The tankhwah that was stipulated to be discharged on the part of the Wazir, and of which if the Begums had complained of the non-discharge Mr. Hastings might have been required to interpose, prior to the forfeiture of the guarantee, was a tankhwah of 40,000 rupees a year upon Sultanpoor, proved by Major Gilpin to be under the charge of Lataffut Ali Khan; for the faithful discharge of which he was answerable in the first instance; and, he not having paid it, of course, the claim would have been upon the Wazir; and, upon the Wazir not doing it, the Begums might have called upon us while the treaty was in force. But the Begums from first to last took no concern in it. He states them to be hostile to these women; and you never find, from the beginning to the end of all these distresses, aggravated probably in their amount—but whether so or not—that the Begums ever interfered or showed any sense of the inconvenience they suffered. And it was not till the year 1784, when they burst out of their apartments, that they gave them the sum of 400 rupees. That is all they do, never claiming the payment of this tankhwah, which was only withheld from the negligence of Lataffut Ali Khan, who ought, from time to time, to have made payment of it; and who having broken his word, in

Indifference shown by the Begums.

Negligence of Lataffut Ali Khan.

19 Feb. 1793. the year 1784, for the payment of 10,000 rupees, they burst out in this extraordinary manner.

Misstatement respecting date of the distresses.

Thus, supposing the events were established at this time, yet the distresses of these women, if they could be at all referred to the business of the seizure of the treasures, would be such distresses as must have happened immediately consequent thereupon. That was, you recollect, in January, 1782. And the distresses, which were relieved by Major Gilpin, began about the month of June, and finally ceased before he quitted his command. That was about the month of September or October, 1782. The distresses that are detailed upon this Article, as the immediate consequence of the seizure of the treasure, were distresses which the honourable Managers know to have happened in the month of January, 1784, at the distance of fifteen months from that seizure which is stated to be the cause of them! Major Gilpin, immediately upon observing the distresses, without looking to the fund that was to satisfy them, with a generosity and humanity that did him honour, instantly advanced 10,000 rupees, as I stated before, and received a repayment of that sum from Lataffut Ali Khan; and even had the receipts to vouch for the fact, which were laid before your Lordships in that box.

Prompt relief afforded by Major Gilpin.

Absence of notification of the distresses by the Begums.

These distresses could not be referred to the conduct of the English, because the 40,000 rupees for them were not received by us. But supposing the treaty to be in force—supposing the Begum had not forfeited it—did she ever notify to us, from the first to the last, that they ever suffered a moment's distress for want of the due discharge of that tankhwah? And, if she did not, it is too much to look, at the distance of many thousand miles, to Mr. Hastings, that he should actually know the distress. The officer, without applying to him, instantly relieved the distresses. They had ceased in October, 1782, and recommenced only about the 26th of January, 1784. And your Lordships will recollect, when I am giving this date for it, that Mr. Holt, who was examined as a witness, states that he, on the 29th of January, 1784, sent to Calcutta a translated copy of a newspaper; for it is from that copy, thus authenticated, that this intelligence is taken. This is stated to have happened a night or two before. Therefore, I must suppose them to be about the 20th to the 26th; and, therefore, though thus unconnected as cause and effect, the honourable Manager, *ad augendam invidiam*, has chosen to connect them together,

Intentional confusion of dates imputed to the Manager.

which are disconnected in the order of time; whether for the purpose of weighing down this gentleman, I do not know; the fact must speak; but having the effect of weighing down a person sufficiently loaded with public accusation already. This is as unconnected as the circumstance of the affidavit of Doond Sing and the legerdemain of the treaties. Whether it be legerdemain in the honourable Manager, I do not know, but it would be legerdemain in us, and, therefore, I describe it by that name. 19 FEB. 1793.

Searching of the dolas of the Khourd Mahal.

Now what is the distress that the ladies in the Khourd Mahal did suffer? The only thing they suffered was this:—that the dolas that came out were searched, in order to prevent the exportation of treasure. But they were searched by women—by persons appointed by a man of the name of Hoolas Roy, who lived upon the spot to superintend that subject, who constantly went between us and the Fyzabad Government, and would conduct that with the utmost possible delicacy.

Explanation of the non-appearance of an affidavit of Hoolas Roy.

Having mentioned the name of Hoolas Roy, your Lordships will permit me to observe that much observation has been made of there not appearing an affidavit of Hoolas Roy among the affidavits. He was, for the same reason that the zamindar whose name was not disclosed, to remain in that country. He was a native and inhabitant of Fyzabad; and he could not have made an affidavit before Sir Elijah Impey, for he appears to have left Lucknow, where he had been taking the affidavits, before the time Hoolas Roy came down; for he is dismissed on the 21st of September, Sir Elijah Impey having taken his last affidavit there on the 12th of December. Mr. Hastings took only three:—one of Captain Davy, verifying the translation of one Govind Ram; another man's affidavit; and a later one of Colonel Hannay's. These were the only three taken by Mr. Hastings. And Mr. Hastings had not begun to take any affidavits at that time. But the reason why, in all human probability, they did not take his affidavit, was—he had communicated to them—for it does not state that he had any affidavit taken—he had communicated the information he had to convey. He had been examined, and sent up the country after they had taken his examination, on the 21st of September; and, from the circumstance of his being to remain in the country, where he would cease to have the protection of the English, to have examined him as a witness would have exposed him

19 FEB. 1793. to the permanent and continuing persecution of the Begums and their ministers.

My Lords, there is one circumstance more which I must comment upon, in somewhat of the same manner as I have taken the liberty of troubling you upon the circumstance of applying the distresses in the month of January, 1784, as the immediate consequence of an act done in the month of January, 1782, which is this:—and I do hope that the honourable Managers will, at some time or other, explain how this matter is thus charged—falsely charged—as an imputation upon Mr. Hastings, and which, if it were true, would transcend all other charges in point of real wickedness and cruelty of heart. They impute to him that he, knowing these distresses which are particularly detailed in the Article, and which are stated to have happened, as I mentioned, in the month of January, 1784, and which did happen then if they happened at all—that Mr. Hastings, upon hearing of this, with the cruelty of a savage of ancient Rome or modern Paris, declared that they were justly merited!

Want of feeling imputed to Mr. Hastings.

Now, if Mr. Hastings, contemplating the sufferings of these poor women, breaking out to go to the market for bread, driven back by bludgeons, enduring all the disgrace and exposure of their persons detailed in this Article, could have had the wickedness to exult, riot and revel, in the degradation and misery of his fellow creatures, he would have been too base a man, I am sure, for me to have lent my voice to defend.

Perversion of his expressions on the part of the Manager.

Good God! my Lords, what will you think when you find this paragraph, in which he is stated to rejoice in their sufferings, is a paragraph of a letter written fourteen months before they existed! It is a letter of instructions, dated the 23d of October, 1782, in which Mr. Hastings, speaking of the severities that had been applied to the Begums, and adverting to their misconduct, said:—

"These severities are justly merited."

I will read the passage, that there may be no doubt. It is in the Articles:—

"That he had taken no steps for the redress of the said cruelties,"—

alluding to the cruelties of the women being driven back by bludgeons—

"but, on the contrary, did declare the same to be justly merited, and did stimulate and encourage his agents and others to continue to enforce the same."

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Now I will read you an extract from Mr. Hastings' letter. It is paragraph the 13th of the instructions to Mr. Bristow. It is in page 254 of the Appendix:—

Letter of Mr. Hastings on the punishment of the Begums.

"The severities which have been exercised towards the Begums were most justly merited, by the advantage which they took of the trouble in which I personally was involved in the last year, to excite a rebellion in the Nabob's government, and to complete the ruin which they thought was impending on ours."

These were the severities which he said were justly merited. The words are detached from their context to be put here—I will say, in corrupt array against Mr. Hastings; for he is charged with saying that which he never said, in the sense in which it is stated. He said these words as applied to other sorts of sufferings—to the uneasiness the Begum suffered in being obliged to refund those treasures so unjustly acquired, and which she had forfeited by an act of treason. But that he should rejoice in the sufferings of these poor women, incapable from their situation to have provoked an injury, would be making him the greatest demon that ever existed. It is hard indeed to wait five long years before an opportunity can be obtained, in the face of his country and your Lordships, of refuting—if I may not call it ill-founded calumny—this ill-founded accusation.

Charge of non-observance of stipulations respecting the resumption of the jagirs.

My Lords, there are but two more topics remaining, upon which I will not waste much of your Lordships' time. One is, that Mr. Hastings took no steps for securing to the Begum the sum stipulated to be paid her under the treaty of Chunar, namely, the net amount of her jagirs. The moment we detected her treasons we had a right to seize the treasures; and when, after these treasures were seized, she, in breach of her agreement, kept back five out of fifty-five, till she had satisfied her part we had a right to retain these jagirs; and accordingly we did so. In the year 1784, after a peace was concluded, and when without any mischievous example we might return these jagirs to the Begum, they were returned, and from that moment to this we have never received those five lacs stipulated; but her obstinacy and perseverance certainly got the better of the rights of the son and of the claims of the Company in that instance.

Reasons for delaying payment.

The jagirs are restored.

Alleged dissatisfaction of the Directors.

It is stated, my Lords, in the Article, that the Directors were dissatisfied with the account given by Mr. Hastings of the reason for the measures taken with respect to the Begums; and he—

"audaciously stifled an inquiry into the crimes charged by him, the said Warren Hastings, upon the said Princesses, which enquiry he was

19 FEB. 1793. enquiry he was bound to make, because the court of Directors did declare themselves dissatisfied with the scandalous evidence transmitted by him, in his justification of the wicked acts aforesaid."

Minute of Mr. Stables.

The Directors never did declare themselves dissatisfied, nor use any words of the kind; but the honourable Managers have taken these words from a minute made by Mr. Stables at that time, and have stated them as the words of the court of Directors. These are the very words of Mr. Stables' minute. Mr. Stables says:—

"The court of Directors seem to me to be satisfied that the dissaffection of the Begum is not sufficiently proved."

These are the words of Mr. Stables; and all the rest of the language in this part of the Charge is the language of his minute, and not of the orders of the Directors—

"And did in effect and substance direct him to make a fuller enquiry."

Misunderstanding of the Directors respecting the charge against the Begums.

They did not in effect and substance, as appears to me, direct him to make a fuller inquiry; but only, if he should find that they had not taken such a hostile part as was suggested, that he would direct a fuller inquiry. But it plainly imports that they were writing, not with that letter lying before them, but, as Mr. Macpherson says, with another and different account. The letter does not refer to the account or narrative sent over by Mr. Hastings. The letter refers to a perfectly different account. The question was, whether the Begum had burst out into hostility before or after Cheyt Sing. It never should have been made a question. Nobody ever supposed that she did.

"If it shall be hereafter found that the Begums did not take that hostile part against the Company, [which has been represented, as well in the Governor General's Narrative as in several documents therein referred to, and as it nowhere appears from the papers at present in our possession that they excited any commotion previous to the imprisonment of Rajah Cheit Sing, but only armed themselves in consequence of that transaction, and as it is probable that such a conduct proceeded entirely from motives of self-defence, under an apprehension that they themselves might likewise be laid under unwarrantable contributions, we direct that you use your influence] with the Vizier that their jaghires may be restored to them."*

They, therefore, seem to suppose that the Begums had been charged for beginning first. There never was any such charge. The charge against them was, that, after Cheyt Sing had broken out into open rebellion, they mixed in it,

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* Letter of the Directors to the Council of Calcutta, 14th Feb., 1783. —Printed in the "Minutes of the Evidence," p. 920.

and had contaminated themselves by a criminal participation in all the mischiefs at that period. "And had only armed themselves in consequence of that transaction:"— that is making a defence for them. The court of Directors assume that which had not been transmitted to them by any intelligence from the Board—that they had actually armed in consequence of that transaction. 19 Feb. 1793.

Therefore, [as for] this stifling the inquiry which is *in cumulum* thrown in, your Lordships see the words of the Charge are not the words of Mr. Hastings, but of another member of that Board; and, inasmuch as it appears, from what they state here, that they only suspected that had been done which it had never been intimated by any body that it had been, namely, that they armed before Cheyt Sing and not after, there is no reason suggested by the Board why they should institute any inquiry whatever upon the subject. Needlessness of the inquiry.

It has been suggested that Mr. Hastings sent home an account of his conduct contradictory to that which he has given at other times; inasmuch as he makes the measure of seizing the treasures to be founded only upon a criminal resistance to the resumption of the jagirs: and these words are relied upon in a letter which certainly has Mr. Hastings' signature to it. Now, if your Lordships will have the goodness to read this letter, you will find that, Mr. Hastings having recently come down and taken his seat at the Board, this letter had been prepared prior to his arrival; for the whole of the letter runs in the terms of the Board speaking of themselves, distinctly from the Governor General:— "We think it would be superfluous to add any thing of our own"—applying to the rest of the Board instead of Mr. Hastings. His name is put to this letter, but I trust you will in candour take that account which he had before transmitted in his own letter to the Board, the 23d of January, 1782, which does not assign the one measure as the ground of the other—that is, the resistance to the resumption of the jagirs as the ground of the seizure of the treasures—but takes notice of them as distinct, separate, measures, adopted for the same purpose of punishment to the Begums for their criminal conduct during the late troubles. For he says, in this letter of the 23d January—and the honourable Managers have not had the goodness, though they read part of it, to read the rest, which we shall give in evidence—he says:— Contradiction imputed to Mr. Hastings. His supposed letter. His letter to the Board, Jan. 23, 1782.

"The Nabob had declared his resolution of reclaiming all the treasures of his family [which were in their possession, and to which, by the

19 Feb. 1793. Mahometan laws, he was entitled]; this resolution I strongly encouraged and supported."*

The originator of the measure of seizing the treasure.

A great deal of your Lordships' time was taken up in considering with whom the measure of seizing the treasures originated, and a great deal of ingenious torture was applied by an honourable Manager to a witness who was ill able to cope with him in that manner—Mr. Middleton—in endeavouring to make out very distinctly and clearly with whom the seizure of the treasures originated. It is perfectly immaterial with whom it originated. Sir Elijah Impey says, he believes it originated with him, and was suggested by him to Mr. Hastings, as a measure necessary and consequent upon the treason; or he believes it came from Ali Ibrahim Khan. It matters not with whom it originated. Mr. Hastings avows the measure as just and fit to be done. He avows broadly that it was a measure of just policy, of just punishment, for an act of flagrant hostility; which act of flagrant hostility discharged the British faith from the observation of the guarantee, and admitted, as I before stated to your Lordships, the Wazir to the full exercise of his original rights.

The punishment of a pecuniary nature.

If, however, Mr. Hastings, giving way to the positive evidence he had from the officer upon the spot, was induced to inflict a degree of punishment which your Lordships think might not, under the facts, be merited—though I cannot permit myself to conceive such will be your Lordships' judgment—the injury has been merely of a pecuniary sort. No other injury has any human being suffered; and it is in the power of the British nation, if they think—which I think they cannot—that any one penny of this money was improperly taken from the Begums, in whose hands it was lodged, to restore that treasure and make full compensation. But I trust your Lordships will not think that treasons of this enormous magnitude, in the most perilous situation of the British affairs, are to be treated with impunity, or, rather, to be rewarded with a compensation and a premium, which would be the case if any such mode were to be adopted.

Substance of the Article.

I have nearly conducted to the close which I proposed the several topics which occur for observation in this Article. The whole Article seems to resolve itself into that which I stated to your Lordships to be the principal point of it, in my first address to your Lordships, namely, whether the Begum had been guilty of any act of hostility which warranted the

* Extract from Letter of Mr. Hastings to the Council.—Printed in the "Minutes of the Evidence," p. 2078.

subtraction of the guarantee on the part of the British nation; and, then, whether the measure of punishment inflicted upon her, by the resumption of these rights enjoyed under that guarantee, was harsh and excessive, or not. It may be made a doubt whether there should not have been some more formal inquiry instituted upon the subject of her hostility and misconduct.

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Propriety of instituting an inquiry into the Begum's conduct.

My Lords, if there be amongst you those who think that a formal, detailed, judicial, inquiry ought to have been instituted into the notorious misconduct of the Begum, before any measures of prevention or punishment were adopted in respect to her; that Mr. Hastings ought to have withheld his belief from the many eye and ear witnesses of the mischiefs she was hourly plotting and effecting against us; that he ought to have suspended all determination on the subject of her jagirs and her treasures, solely protected as they were by our guarantee, and thus solely pledged in the hope and on the condition of a continuing amity, till the season of returning peace should have enabled us to confront formally and judicially Colonel Hannay and his officer with Behar and Jewar Ali Khan—Captain Gordon and his native officer with Shumshire Khan and Colonel Popham—Captain Wade and Captain Birrell with the najibs whose declarations they have severally attested—to those who thus think, and who think that the unquestionable and then unquestioned notoriety of a whole country, corroborated by every officer in principal command in that country, speaking to the facts within their own immediate observation and knowledge, is not a sufficient ground for immediate political conduct—to persons who thus think I am furnished with little argument to offer. I have no record of conviction of the Begum, engrossed on parchment, to lay before you; but have only that degree of evidence which is calculated to carry home conviction to every human breast accessible by the lights of truth and reason, and parts of that evidence notified to the Begum herself, during the crisis of our impending fate, whilst it was yet in her power to have falsified the charges against her by solid and substantial acts of useful assistance, instead of recognising the truth of them by the guilty token of sullen and contumacious silence.

God forbid, my Lords, that I should endeavour for one moment to draw in question the solemn obligation of public treaties! I am contending for the most faithful, and honourable and exact, performance of them. We have guaranteed

19 Feb. 1793. Recapitulation.

to her the most valuable immunities and protection. We asked only in return the common offices of friendship—the mere returns of ordinary gratitude. How were they rendered, when the palace of Sivalaya and the streets of Ramnugur were yet reeking with the blood of our slaughtered countrymen; when that benefactor and that friend to whose care, as she herself asserts, Suja-ud-Dowla, her dying lord, bequeathed her, had scarce rescued himself from the midnight massacre prepared for him at Benares; when he was pent up with a petty garrison behind the feeble walls of Chunar, expecting the hourly assault of an elated and numerous enemy; when his fate hung by a single thread, and when the hour of his extinction and that of the British name and nation in India would, according to all probable estimate, have been the same? In this hour of perilous expectation, he cast many an anxious look to see his allies of Oude bring up their power, and trusted that the long-favoured and much protected house of Suja-ud-Dowla would have now repaid with voluntary gratitude the unclaimed arrears of generous kindness.

As far as respected the son of that prince, Asoff-ud-Dowla, who, by no fault of Mr. Hastings, had least benefited by British interposition, who, in the commencement of his reign, had been robbed of his stipulated rights under the treaties of Allahabad and Benares, and had been unjustly manacled and fettered by that of Fyzabad, which had restrained him from his due resort to national treasures, for the just discharge of national incumbrances and the just relief of national distresses — when that prince found an additional motive to his own fidelity in the accumulated distresses and difficulties of his ally, to the mother and grandmother of that prince, enriched with his extorted spoils, bound as they were by every public and every private tie of gratitude and honour, he looked for substantial security, but he looked in vain. It was not, however, as passive and unconcerned spectators that they regarded this anxious scene of gathering troubles. No, my Lords; to the remotest limits of their son's dominions their inveterate hate and detestation of the British name was proclaimed and displayed, in every shape and form which malice could suggest or treachery assume. In the immediate seats of their own protected wealth and power—at the reverenced threshold of their own greatness—in the sight of their nearest servants, who best knew their genuine wishes, and

from that knowledge were best prepared to execute them— a British commander of a numerous force, marching to sustain the common interests of Great Britain and its allies, is repelled, by the menace of actual hostility, from the sanctuary to which he had fled with undoubting confidence for protection! 19 FEB. 1793.

About the same period, another British commander, abandoning his camp to the superior forces of a rebellious chief, linked in mischievous confederacy with the Begum, hears, amidst the groans of his own murdered followers, the gratulation of his own defeat and of his enemy's success proclaimed in loud discharges of cannon from the walls of Fyzabad; and, in the midst of all this dismay and discomfiture of our forces—in the neighbourhood of their residence —their eunuchs, the slaves of their palace, in the sight of our own insulted officers, array and equip a numerous and well-appointed force to brave us in the field!

Conclusion.

If, my Lords, these acts do indeed consist with good faith, or are such slight infractions of it as merit no considerable degree of public animadversion, then I consign Mr. Hastings to the unqualified censure of mankind and the overwhelming condemnation of your Lordships. But if, my Lords, at such a season, to have connived at another's treachery would have been effectually to have proved and to proclaim his own—if to have continued an undisturbed and protected enjoyment of territory to them who had interdicted from its approach his countrymen, flying from the sword of an eager and pursuing multitude, would have been to recompense that cruel interdict with pernicious favour and mischievous reward—if to have continued undiminished to the Begum the enormous fruits of her own original extortion and fraud, applied, as they recently had been, to the meditated and half accomplished purpose of our undoing, would have been an act of equal political insanity with respect to ourselves and of injustice to our ally, the defrauded proprietor of this treasure—then was Mr. Hastings, not warranted only, but required and, without choice of alternative, compelled to adopt that degree of sober, lenient, salutary, chastisement which was, in fact, administered upon this occasion. To have suffered with impunity these open acts of hostile aggression, would have been to have exposed our tame and irrational forbearance to the mockery and scorn of the whole Asiatic world.

Equally removed from the dangerous extremes of unre-

19 FEB. 1793. lenting severity and unqualified concession, he had the good fortune to preserve in every part of India a dread of our [power,] respect for our justice, and an admiration of our mercy. These are the three great links by which the vast chain of civil and political obedience are riveted and held together in every combination of human society. By the due exercise and display of qualities such as these, one faithful servant was enabled to give strength, stability and firmness, and, at length, to communicate the blessings of repose and peace, to the convulsed members of our eastern empire.

This age has seen one memorable and much lamented sacrifice to the extreme and excessive indulgence of the amiable virtues of gentleness and mercy. But the safety of our country, the order and security of social life, the happiness of the whole human race, require that political authority should be everywhere sustained by a firm, regular and discriminate, application of rewards and punishments. Happy indeed is that statesman who, at the close of a long life of public service, is enabled to look back, not only without guilt, reproach and regret, but with complacency and satisfaction upon those trying occasions in which the rigorous demands of public safety compelled him to display the terror or to wield the vengeance of his country! Most happy, if, in such instances, he has so attempered his passions and regulated his judgment as to have preserved a well-poised balance between the harshness of excessive sovereignty, on the one hand, and the dangerous relaxation of unqualified indulgence, on the other.

The Defendant, my Lords, in humble confidence that, in your Lordships' fair and liberal judgment, he shall be found thus to have conducted himself, and to have discharged a necessary and indispensable public duty with no wanton and no unnecessary sacrifice of private happiness, submits, in this instance as in all others, without apprehension, the temper and complexion of his motives and conduct to the sober and manly scrutiny of this enlightened tribunal.

SPEECH OF THOMAS PLUMER, ESQ., COUNSEL FOR MR. HASTINGS, IN SUMMING UP THE EVIDENCE IN DEFENCE ON THE SECOND ARTICLE OF THE CHARGE, RELATING TO THE BEGUMS OF OUDE; 25 APRIL, 1793.

MY LORDS, the evidence for the Defendant upon this Article being now closed, it becomes my duty, on the part of Mr. Hastings, to sum up and observe upon the whole of this extensive subject; and, my Lords, it is impossible for me, upon the present occasion to be insensible of the magnitude and importance of the duty which that trust imposes upon me. 25 APR. 1793.

My Lords, I cannot forget the extent and variety of the matter which remains for discussion, the peculiar stress which has been laid upon the present Article against Mr. Hastings, and the extraordinary talents exerted in support of it.

My Lords, I know that, in the present Article and in the one that precedes it, are to be found, if at all, the verifications of all those heavy imputations on Mr. Hastings of oppression, tyranny and breach of faith.

Enormity of the guilt charged against Mr. Hastings.

My Lords, I am also aware what peculiar weight has been given to the present Article before your Lordships, and that, in the conduct of Mr. Hastings towards the Begums of Oude, he has been represented to have acted in a manner that, on searching the history of the world—all the annals of human tyranny or human suffering—all ancient and modern writers that have searched into depravity—your Lordships will not find, in the history of human turpitude, an account of horrid, of deliberate, cold, cruelty that can exceed it. Nay, my Lords, even the man who can conceive or fancy evil beyond this, his mind must have a fertility of evil which the history of all the world, from the day of original sin to the present, can neither add to nor improve.

My Lords, I know also that Mr. Hastings has been held up to your Lordships as such an one that, when cruelty seems to have reached its bounds and guilt to have ascended

25 Apr. 1793. to its climax, there is something in his character which seems to transcend the latter and overleap the former.

My Lords, I know this has been the representation given of the character and conduct of the gentleman for whom I have the honour to appear. My Lords, these are strong assertions: they require clear and strong proof. My Lords, for eight years has Mr. Hastings stood an accused man. Time has surely been given to substantiate these charges against him, if they are true, and no pains have been spared. All [has been done] that the powers of the human mind could effectuate against him; every quarter has been ransacked for evidence, written and parol; all his correspondence, all his letters, public and private, are before your Lordships; all the witnesses who were in his confidence have been examined and cross-examined, day after day, with the most searching industry. Surely, my Lords, by this time the true character and conduct of Mr. Hastings and those whom he is supposed to have oppressed must be known and ascertained, beyond the reach of any prejudice to mistake, or any ingenuity or eloquence to misrepresent with success.

Completeness of investigation of the charges.

It is the property of truth to establish the conviction of it with progressive influence upon the mind. Permit me to ask you, what is now the result of this long investigation? Is that the belief respecting the character and conduct of Mr. Hastings in India?—My Lords, the witnesses to those brilliant exertions of eloquence have carried them out to India, and brought back the voice of all India on the subject.

My Lords, we have been told that the proof upon this subject is strong as ever abashed the confidence of courageous guilt, or brought conviction home to the minds of conscientious judges. My Lords, it is my duty—my humble duty—to examine that subject; and, in comparing the charge with the evidence, I shall do it with the utmost plainness in my power, from a perfect conviction that to the vindication of the character and conduct of Mr. Hastings nothing more is necessary than that the subject should be understood. I trust, my Lords, if I have the good fortune to be honoured with your Lordships' attention, I shall be able to establish, to the conviction of every one of your Lordships, that the whole of this boasted Article stands upon erroneous principles and a totally mistaken view of the subject, from one end to the other.

The Article founded on erroneous principles.

My Lords, I am too sensible of my own situation to be arrogant enough to presume to expect that any degree of attention

should be paid to any assertion of mine, further than as it is supported by proof. I do not wish it. I shall proceed to discharge my duty in the best manner I am able, by laying before your Lordships a faithful review of the evidence. 25 Apr. 1793.

My Lords, I cannot hope that, in the discharge of this duty, I shall be able to add anything to the able argument which your Lordships have already heard, much less to suggest any matter of observation to your Lordships which your superior wisdom and judgment will not anticipate: but it is my duty to make the attempt; and the experience, which I cannot but with gratitude acknowledge to have had, of your Lordships' former indulgence encourages me to hope that, upon the present occasion, however unworthy I may be of it, I shall now be honoured with a continuance of your Lordships' attention.

Plan of discussion.

My Lords, in examining this subject, I conceive the best way of presenting it before your Lordships will be, in the first place, to examine what is the nature and outline of the Charge; and then to compare the proof that has been adduced in support of it. And, my Lords, it will be found that this Article—part of it—extends over a very considerable period of time; the subject commencing in the year 1775, and closing in the year 1783. It is spread over no less than thirty paragraphs, and comprehends a great extent and variety of matter. But, my Lords, I think, in examining it, the subject may be analysed and simplified, and reduced into that which is the plain subject of the principal part of the Charge; and it will be found to lie in a very narrow compass.

Subjects of the Charge.

My Lords, the principal subject of this Charge, I conceive, will be found to resolve itself into two measures. The one is that which respects the resumption of the jagirs belonging to the two Begums; which is represented to have been a seizure and confiscation of their estates, to the subversion of property, and an act in itself of great cruelty and injustice, besides its being a direct violation of a solemn treaty. The other measure which is the subject of accusation is, the seizure and confiscation of the treasures which belonged to the younger of the two Begums. That is also represented in the same point of view to be a subject of crimination, as in itself an act of cruelty and injustice, and a direct violation of a solemn treaty. If your Lordships examine this Article attentively, as I have no doubt your Lordships have done, you will find that all the rest of the matter

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Subordinate matter contained in the Article.

contained in it is in a degree appendent upon these two principal subjects of charge: either that part of the Article that presents historically a review of the titles under which this property, landed and personal, was held; or that which presents before your Lordships the state of affairs and the peculiar responsibility which attached upon Mr. Hastings at the time of executing the two measures; or relates the circumstances accompanying these two measures, with a view to the aggravation of the two measures—as in showing the motives upon which they proceeded, the persons who were employed in them, the circumstances attending them, the manner in which they were carried into execution, and the dreadful consequences which are stated to have resulted from them.

Dissection of the Article.

My Lords, examining the subject in this way, your Lordships will find that, of the whole thirty paragraphs of which this Article consists, the first part of it, comprehending no less than ten of them, which usher in the Charge, is purely historical and contains no allegation of criminality whatever, but the reverse. They represent the conduct of Mr. Hastings throughout all that period, that is the subject of the first part of the Article, rather as a matter of commendation.

The next head of the Article comprehends the six next paragraphs, which are stated to be with a view of fixing peculiar responsibility on Mr. Hastings, and contain also incidentally some allegations of Charge, with respect to some of the subjects that are introduced in it. But they are principally stated with a view to fix peculiar responsibility upon Mr. Hastings in the good government of the country of Oude, at the period, in the year 1781, when the two measures in Charge were carried into execution.

The next paragraph is merely a summary of the duty that belonged to Mr. Hastings at that period of time.

Of the thirteen remaining paragraphs, your Lordships will find two of them—I think the nineteenth and the twenty-first—to consist merely of matter of observation, to state the nature and quality of the matters that are in Charge in the other parts of the Article. Another of them is a mere repetition of the title under which the personal property was held. And the remaining paragraphs your Lordships will find to be entirely of the sort that I have stated—to describe the conduct of Mr. Middleton, and the manner in which he carried into execution the orders of Mr. Hastings

upon these two subjects, and the consequences that were actually produced, in bringing to utter distress and want the Begums themselves and their dependants; and particularly describing, in a manner that I am persuaded your Lordships have specially attended to, in one of the paragraphs, the dreadful consequences that are imputed to the acts of Mr. Hastings. 25 Apr. 1793.

My Lords, in this way, your Lordships will find the whole substance of the Charge to resolve itself into the eighteenth and the twentieth paragraphs—I think they are—containing the two measures that I have stated. The subject then is jagirs and treasures. The great Article is divided—the first part, into that which relates to the rights of the Begums respecting these two matters; and the next, into that which falls under the head of the infraction of these rights.

Distinctions to be observed in considering the subject.

My Lords, in considering this subject, I shall, with your Lordships' permission, advert to the two grounds of criminality and keep them distinct; namely, the criminality imputed to the measures themselves, independent of any treaty at all—the cruelty and injustice of the two measures, independent of any treaty; and the direct violation of treaty by the execution of them. These appear to me to be two distinct matters and which require a distinct consideration.

My Lords, the first subject, the jagirs, your Lordships will recollect, extends to both the Begums of Oude, because both the Begums held jagirs. The other subject, of property—personal wealth—applies solely to the case of the younger Begum.

Charge respecting the resumption of the jagirs.

With respect to the first of these subjects, the jagirs, they are represented to have been the estates of the two Begums, and the deprivation of them to have been a violation of the rights of property. I conceive, the whole of that part of the Charge is purely bottomed in mistake. It will surely be considered of some consequence, in a charge respecting the resumption of the jagirs, to have it first clearly ascertained what the nature of a jagir is. But upon that subject your Lordships, I think, will find that this Article, which imputes to Mr. Hastings the violation of the rights of property in India by the resumption of these jagirs, does itself call in question the most clear, acknowledged and established, rights, belonging to the princes of the country, of any that exist in that country.

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Conformable with the law of Hindustan.

My Lords, I conceive it will appear that the act of resuming jagirs is conformable to the established usage and law of Hindustan. It is entirely at the pleasure of the prince of the country to resume that which is the result of his bounty and held at his pleasure; and it will be found that this Charge is bottomed upon giving to the holders of this species of property rights that never were contended for in India by anybody, and in endeavouring to take from the grantor rights that never were disputed.

My Lords, the measure that I have to defend with respect to the jagirs, your Lordships will recollect, is the resumption of the jagirs of the two Begums, with a full equivalent to the net amount of the produce of them: and the prosecutors insist that that act of commutation of land for money was an act of cruelty and injustice. Upon general principles, I conceive, there can be no doubt whatever that all private property is held of the state, liable to every commutation and regulation that the good, the interest, the safety, of the state, requires, provided an equivalent satisfaction be given to the individual holder of it; and, therefore, I conceive, I might stand upon the general principles, applicable to all property in all countries, applying to the present subject.

A jagir, a money grant charged upon land,

is resumable at pleasure.

It rests then with the prosecutor to show that there is something in the nature of a jagir that takes from the state the power that generally belongs to it. I apprehend it will be found directly the reverse; and that this peculiar species of property, so long as it exists, vests in the holder of it no absolute right to the land—no right to the land at all. Its proper nature and quality will be found to be a money grant, charged upon and issuing out of land. In the next place, it will be found that, generally speaking, unless it be otherwise expressed in the grant, the very nature and essence of a grant of a jagir is to be resumable at the pleasure of the grantor.

Evidence of Mr. Purling.

My Lords, in order to prove the contrary of those propositions which are assumed by the prosecutors, give me leave, in the first place, to examine what evidence the prosecutors have laid before your Lordships, to support their view of the subject. They have produced, in the first instance, the testimony of Mr. Purling, who was the Resident at the Nawab's court, in the year 1780. My Lords, I will produce to your Lordships the evidence of that gentleman, and examine how far the testimony of Mr. Purling supports the assertions of the prosecutor. I conceive the fair result of that evidence

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will be found to be, that the evidence for the prosecution is nothing but a conjecture of the witness, and that all that he actually does know tends to support the case of the Defendant. The evidence of Mr. Purling will be found in the 492nd page of your Lordships' printed Minutes. The question put to him, on the part of the honourable Manager, is:—

"Whether you had not heard, in the first place, that some jaghires are confirmed by sunnuds from Delhi?"—"I have."

He is then asked with respect to a particular jagir which, he says, he has heard was in that way confirmed:—

"Whether you do not know, or have not reason to believe, that the jaghires of the Begums were granted to them for the term of their lives?"

My Lords, I am now stating the strongest part of the evidence that was given by Mr. Purling for the prosecution. The answer is:—

"I don't know from what period it originated, but I should conceive that people of their rank would have jaghires of that kind for life."

Partly founded on conjecture, partly supports the Defence.

This is, therefore, matter of conjecture—his opinion of what would probably be the case in the instance of persons of their rank. I apprehend, if I am able to show your Lordships that, by the general nature of a jagir, it is not ordinarily so granted, it rests upon those who wish to establish an exception to produce particular evidence to prove it. The same gentleman—Mr. Purling—being asked whether he knew any instance in the province of Oude of such a measure as the resumption of the jagirs, or of their being taxed, says:—

"Not in the manner that was proposed in the year 1780; but I have stated upon the records here that the Nabob has resumed jaghires at his own pleasure whenever he chose." "Have you referred to any instances of it?"—"They are particularly mentioned upon the record transmitted by me to Government. I have also said that the exercise of his power with respect to the jaghires has always been arbitrary, as far as I recollect." "Do you know any distinction with respect to the title of the jaghires, whether they are all held from the Nabob?"—All the jaghires in the Nabob's country are certainly held from the Nabob. From the form of the Government in Indostan there are many instances of resumption, I have no doubt, but I cannot recollect any."

The same gentleman, Mr. Purling, in his letter to the Board, in April, 1780, which your Lordships will find in the printed Evidence, page 480, after stating that no one has advanced a claim to any exemption but those observed upon in the account he had transmitted to Government, says:—

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"The Nabob certainly exerts an absolute authority as to the continuing or resuming of every private jaghire."

Mr. Middleton's description of jagirs.

The other witness that the Managers have produced upon this subject is another Resident in the country, Mr. Middleton. The evidence of Mr. Middleton upon this subject is in the Minutes, page 736. He is asked:—

"What difference is there, if you know it, between the tenure of the jaghires and the lands holden in ultumgah?"—"My idea of the distinction is, that a common jaghire is resumable at pleasure, and that an ultumgah is a grant confirmed by the King, perpetual and hereditary."

He is asked,—

"Whether a jaghire is in the nature of a rent charge, or whether it carries with it the actual possession of the land, in general?"—"The jaghirdar certainly has possession of the land, but it is understood that a surplus beyond the sum for which the jaghire was granted does belong to the Prince who grants the jaghire, if he chooses to take it. The jaghire is granted for a specific sum."

And then he states the technical expression that is used for that excess which belongs to Government, which is called the taufir.

My Lords, this is the parol evidence that has been adduced by the prosecutor, for the purpose of establishing the right of the Begums to those jagirs for life. The result of it I conceive to be, that the general doctrine is against it; and that no particular evidence is proved to establish the exception in the instance of the Begums. But I find an attempt is made to supply this defect; for, when your Lordships called upon the honourable Managers to establish something like better evidence upon this subject, and more satisfactory to make out a title for those on whose behalf the title was set up to these jagirs, your Lordships asked the honourable Managers, whether there was no account transmitted to Calcutta of the nature of the Begums' jagirs. The answer will be found in the printed Evidence, page 493, and to which I will request your Lordships' attention. The answer that the honourable Managers were then pleased to give to the question put by your Lordships, after the examination of Mr. Purling into the nature of these rights, antecedent to any treaty, is this:—

Assertion of the Managers, respecting the nature of the claims of the Begums.

"The Begums themselves and their ministers constantly asserted they were for life. Some of them were not derived from the present Nabob; particularly the elder Begum's."

I will beg your Lordships also to attend to the occasion that gave rise to that question, and from which it will appear

clearly not to admit of the sort of explanation that was attempted the other day to be given, that it could possibly relate to a question respecting the rights of the Begums derived under the treaty; but it was a question respecting what grants they had of these jagirs antecedent to the treaty, and under the head that was then the subject of inquiry. 25 APR. 1793.

The honourable Managers, therefore, have asserted what I have stated to your Lordships. I have carefully looked over the evidence to see whether that assertion was made good. I have no doubt but the honourable Managers would not have represented to your Lordships what they did not believe to be true. They had made this a subject of long inquiry, and they give this in a criminal court. They give it with all the weight which justly belongs to the assertions of the honourable Managers. They give that information to your Lordships as the result of their inquiry, that the Begums and their ministers always so represented it.

My Lords, we did not presume, upon this subject, to rest upon our own industry or accuracy when opposed to such high authority; believing it impossible that, without very accurate investigation, that assertion would be made, and that, though we could not find it, yet better industry and better attention would discover and verify the assertion. We therefore directed a very accurate officer at the India House to make all possible search, to find whether that which was represented to have been always the case had, in any one instance, ever been the case. Your Lordships have heard the testimony of Mr. Hudson upon that subject. It is in the printed Evidence, page 2009:—

"Whether you have carefully examined the records of the India House, for the purpose of discovering whether, in any document of any description, the Begums or their ministers ever asserted that their jaghires were held for life, or that they were entitled to hold their jaghires for their lives;—did you find any single instance that they ever did assert that right?" Contradicted by the evidence of Mr. Hudson.

What is the answer, my Lords?

"No! I did not." "Have you searched for the purpose?"—"I have."

Then, what was represented to your Lordships, on the part of the prosecution, to have been always the case is now proved upon oath to have never been the case in a single instance! And this respects written documents, which are open to the inspection of every body, and which must have been under, or might have been under, the eye of those who gave this representation.

25 Apr. 1793. My Lords, I am persuaded that this, on the part of the honourable Managers, was merely a mistake. But they will permit me to observe, that, if such a mistake had been committed by Mr. Hastings—Nay, my Lords, with respect to Mr. Hastings, mistakes committed, not in a court of justice, not when invested with that high authority that gives all the weight of assertion against a gentleman upon his trial, not given deliberately and coolly after long investigation and inquiry into the subject, but all the little inaccuracies of Mr. Hastings of dates and circumstances of the minutest kind, committed in the midst of business, in the hurry of the multiplicity of concerns that were pressing upon his mind—[with respect to these] your Lordships remember what have been the harsh and grating observations that have been made repeatedly to the teeth of Mr. Hastings:—"False! false! false!—an infamous misrepresentation!" My Lords, I should have thought [it would have been apparent to the honourable Managers that] it is incident to persons to make mistakes, [since] with all their united labour and united ability [they have been unable to avoid them]. Surely, my Lords, a little candour might have been shown in the scrutinies of all the volumes of Mr. Hastings; allowance might be made for the casual and accidental mistakes that must inevitably be made in business of such extent and magnitude, when we see, upon occasions like the present, the best are not free from mistake.

Indulgence claimed for mistakes on the part of Mr. Hastings.

Jagirs proved to be resumable.

I therefore contend that, in the result of the evidence on the part of the prosecution on this subject, there is nothing to establish the positive assertion of the Begums holding their jagirs for life; but that they have established this important proposition on behalf of the Defendant — that the general custom and usage of Hindustan prevails for the Nawab to resume jagirs at pleasure; and that, while they existed, it was a grant rather made in the nature of a rent charge upon land, and that whatever the land yielded, beyond the sum for which the land was given, belonged to the person who granted it. They state, further, that all the jagirs of the country are actually held of the Nawab. I conceive, my Lords, therefore, that, if I were to rest here, the proposition on the part of the honourable Managers is not proved. We have, in addition to this, given some parol evidence, confirmatory of the testimony on the part of the prosecution, to establish the usage. The testimony in particular that occurs to me now [is that] of a respectable officer, who was thirty years in the Company's

services, and who, though a military officer, I conceive might equally be competent to speak to the usage of the country in which he lived; more especially might be competent to speak to this kind of tenure, which in its origin was of a military nature. Upon this subject the testimony of Colonel Duff has been given, in which, being asked the nature of a jagir, he has stated it, by the usage of the country of Oude, to be resumable at the pleasure of the Nawab. His testimony upon that subject is in the printed Evidence, page 1972. 25 Apr. 1793. Confirmatory testimony of Col. Duff.

It may be then said, that we have by all this testimony done no more than establish the usage. It might be an arbitrary exercise of power, but it does not necessarily follow that this was the right of the prince to act in this manner. In order, therefore, to remove every possible doubt upon the subject, and to show that that which was the constant usage upon the subject was conformable to the ancient and established constitution of Hindustan, we have produced evidence, on our part, to establish what is the known law and usage of Hindustan, by authorities of the highest estimation.

My Lords, the evidence that I particularly allude to is the testimony of Sir John Shore, who, in consequence of directions from his employers at home, has made the nature and tenure of a jagir the subject of his particular inquiry;—an inquiry instituted in the year 1788, not with a view to any particular purpose, but solely for the general purpose of collecting information to be transmitted to his employers, in consequence of the orders he had received. He has employed all the industry in the investigation of the subject that the nature of it admitted. He has had before him all the sanads and grants, all the actual accounts that are returned to Government. He has had before him all the knowledge that parol information could give him, from all the persons most competent to inform him respecting this subject. Your Lordships will there find the result that Sir John Shore draws upon the inquiry. Evidence of Sir John Shore.

The evidence of Sir John Shore was given to your Lordships on the last day. I have not been possessed of the evidence, and therefore cannot furnish your Lordships with reference to the exact page. Your Lordships will find there that the conclusion that Sir John Shore draws, from all the inquiry he had made on the subject, tends to establish two propositions:—First, that the jagirdar, so long as his jagir exists, has no interest in the land, but is intitled only to the money; and, secondly, that a jagir in its nature, where it is The jagirdar has no property in the land.

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not otherwise specifically expressed, is considered to be resumable at pleasure.

The jagir is resumable at pleasure.

My Lords, I find that proposition stated by Sir John Shore in the 30th paragraph to note D. He concludes it thus:—

"Such were the ancient and regular forms of the Mogul constitution regarding the dignity called munsub and its appendage jagheir; and from these it will appear that a jagheerdar had not originally or constitutionally any right of property in the lands."

And he states in particular, in that same note, commuting lands into money and money into lands to be the frequent established practice adopted in that country. Upon this subject, he states:—

Variable nature of a jagir.

"It did not follow that any particular spot once granted to a munsubdar"—which is the same thing—"was to be continued to him during life; nor even that he should invariably receive his pay by an assignment on land. When a munsubdar detached on service was called or sent to another province, he generally received his assignment on lands not far distant from his new station. Sometimes the jagheerdars were obliged to receive their pay in money, [and those whoever paid in money obtained assignments on land. In the book called the Inshai Aulumgeree there are various draughts of grants both for converting money assignments into jagheers and the latter into the former: a proof that no perpetual occupancy of land was conveyed] under this tenure." *

That, therefore, establishes that, by the nature of this tenure, it is what Sir John Shore states it to be—purely, an assignment of money; and that the land is given to the jagirdars as a fund out of which that money is to be paid. Sir John Shore also states a variety of circumstances to establish that same proposition. He mentions the instances in which the jagirdar was obliged to pass his accounts with Government; bringing into the account all the excess, called taufir, that the land yielded, over and above his money payment. He produces the accounts of the jagirdar [which] were *eo nomine* brought to the account. Nay, my Lords, still further—he has stated that it even had acquired a technical name: the head of the account had acquired a technical name of khalsia, which brought to the account the difference between what was the ancient assessment of the land, at which it was given to the jagirdar to pay himself, and the actual produce of the land itself.

Circumstances adduced by Sir John Shore in confirmation of his statement.

The jagir an appendage to a mansab.

He has also, under the other head, stated that, originally, in the nature of it, a jagir is an appendage to a dignity called a mansab. There are no hereditary dignities in the Mogul

* Minute of Mr. Shore on the rights and privileges of jagirdars.—Printed n the "Minutes of the Evidence," p. 2044.

empire. As the dignity itself was revocable at pleasure, of course the accessary would follow the principal; and, in order to put this matter out of all possible doubt, Sir John Shore has actually produced a regular account of the rules by which the resumption of jagirs was regulated, to show, if the jagir was resumed at such and such periods, how much the jagirdar was intitled to hold of the growing payments issuing out of the land, and how much belonged to the prince.

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Regulations framed for the resumption of jagirs.

I conceive, therefore, there can be no doubt upon this subject, according to the opinion of Sir John Shore, that both the propositions that I take the liberty of stating are clearly established with respect to the nature of it, while it exists, and the resumability of it at the pleasure of the prince.

I certainly cannot forget that the credit of this evidence was attempted to be shaken by an observation made respecting the gentleman whose minute I have quoted; and, my Lords, the right honourable Manager, with that convenient ingenuity which, by the mere application of terms, can give to character and conduct the form and impression that may suit, has styled Sir John Shore "the fabricator of a defence, and the accomplice of Mr. Hastings." The fabricator of a defence! because Sir John Shore, obeying his own generous feelings, has assisted in a just explanation of that Article of the Charge upon which he was most competent, from his knowledge and experience and personal observation, to form a correct judgment, and has furnished that which appeared to him to be a satisfactory explanation of the subject. The accomplice of Mr. Hastings! because, from his superior talents and known ability, and experience in this particular department, he was selected by Mr. Hastings to superintend that system of revenue which has been continued, with little variation, to the present day; and to which is owing the great and happy prosperity of the revenues of India at this hour; and for his conduct in which, this "accomplice of Mr. Hastings" has in two instances been selected—I might say—has been called from his retirement, without any solicitation on his part, to fill the highest stations in India, at first as the associate, and then the successor of the Marquess Cornwallis. This is the fabricator of Mr. Hastings' defence, and this is his accomplice! I trust I am not under the necessity of stating anything to show that these observations detract nothing from the credit and the autho-

Complicity imputed to Sir John Shore.

Vindication of his character.

25 Apr. 1793. rity of the testimony which we have adduced upon this occasion.

My Lords, after the high authority that I have cited upon this subject, I shall certainly not trouble your Lordships with any references to the common books that treat upon this subject. They are open to general reading, and will all be found to show the notoriety of this doctrine respecting jagirs. I conclude, therefore, with a belief that your Lordships will entertain an opinion that, upon both these subjects, the nature of a jagir while it lasts, and the resumability of it, the Article which impeaches the conduct of Mr. Hastings tends to draw into question the established rights of the prince; to take from him those rights which never were disputed—which are established by all the evidence on both sides; and to give to the jagirdars a right that never was contended for.

The right of the sovereign compromised by the assumptions of the Article.

But, if I were to admit that your Lordships are to proceed upon conjecture and belief that the Begums had express grants for their lives, what would be the consequence? That they would hold them for their lives subject to the general principles that all property is held upon, subject to receive a commutation, if the interest of the state required it. If any inconveniences are found to result from property in the hand of any individual, in this or that shape, your Lordships know too well the established principles upon that subject to make it necessary for me to go into any observations, or quote any authorities respecting it. All the cruelty towards these persons was to commute their land into money; to give them a full equivalent of the net produce and amount; and to exercise the known, clear, established, right of the prince of the country to resume the land and to give an equivalent in money. It would, therefore, only be to inquire whether that right, which unquestionably existed, and which establishes the justice of the act, was or was not properly exercised in the present instance. And upon that subject, which is a question of policy—whether there did or did not exist a sufficient conviction and belief of the evils arising from the property in that shape, vested in those persons, to make it a proper, a politic, and wise measure to resume from them the jagir that they held—upon that subject, I have only to refer your Lordships to the evidence that you have before you of what were the abuses practised by the jagirdars, and what were the rights that they enjoyed under them. It appears to be a

Right of the sovereign to resume land on payment of an equivalent.

Policy of the measure.

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Independence assumed by the jagirdars.

monstrous and preposterous establishment, that, in the heart of a country, in an absolute government, these persons, who are the pensioners, and ought to be dependants, of that prince, were rendered formidable to the prince, by possessing independent authority over the districts committed to them merely for the purpose of paying themselves the money that was granted to them. They kept up armies. They exercised a complete, civil, independent, jurisdiction within the districts assigned to them; and kept up a body of forces that were formidable to the prince. In the instance of these persons who are the immediate subjects of the present Charge—the Begums—it is in evidence before your Lordships that the number of troops which they actually kept up—these ladies who have been represented as helpless women immured in a sanctuary, I think, and not in a prison, within their zananas, and who concerned themselves nothing with the world, and were remote from public observation or from any interference with the affairs of the world—I beg pardon—"enshrined, rather than immured,"*—these persons are proved by the witnesses to have kept up a body of no less than 10,000 troops! The testimony of the Resident upon that subject your Lordships will find in page 608, where, upon the question being put to him, he states that the number of troops which they kept up was about 10,000. [Thus] says Mr. Middleton. Likewise, in the printed Evidence, page 880, your Lordships will find, in a letter from Mr. Johnson to Major Gilpin, he represents that, at a subsequent period, July, 1782,—

An army of 10,000 men kept up by the Begums.

> "They had at that time actually in the town between 7,000 and 10,000 men—men at that time actually engaged in hostility against the prince, opposing the execution of his orders by main force, drawing up their troops in regular array with their artillery and officers to oppose the authority of the prince of the country."

Question of the policy of the system.

Is it necessary to go into any argument to prove the impolicy of such a system upon theory? Is it not manifest that it must be productive of great evils? But, if any doubt could remain upon that subject, I have only to refer your Lordships to the experience actually found of the evils that did exist in this country, and that were found to result from the jagirs of these very persons. Give me leave to refer your Lordships, in a general way—I shall have occasion to do it, by and by, more particularly—to what is now proved to have been the conduct of the principal officer in charge

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* See Mr. Sheridan's speech; vol. i. p. 493.

25 APR. 1793. of these jagirs, Shumshire Khan, the minister's officer in charge of the jagir of Tanda. What was his conduct to Captain Gordon, when marching with the Nawab's troops to join Colonel Hannay, and marching to Benares to the assistance of the Nawab and Mr. Hastings and the British Government? What was the conduct of Shumshire Khan at that period? What use was made of the Begums' jagir? What use was made of the Begums' forces? I have only to refer your Lordships also to what is likewise in proof—that, throughout, in every period of the business, from the year 1776, mischiefs, resulting from the power vested in the Begums from their jagirs, were constantly experienced.

Complaints of the Nawab on the subject of the jagirs.

My Lords, I find complaints upon this subject so early as the latter end of December, 1775. Your Lordships will find, in a letter from Mr. Bristow to the Begum—which I cite from the Appendix, because, I believe, it was not given in evidence till lately on our part—Mr. Bristow represents a complaint that the Nawab made of the evils that he had found to result from the jagirs in the Begums' possession; and he then makes a proposition through the medium of Mr. Bristow. Mr. Bristow states that—

"The Nabob agrees to one method, which is, that you give them up entirely, and instead thereof receive a monthly stipend, through the channel of any person that you choose to fix on; for the Nabob observed to me, that two rulers are too much for one country."

That was the experience, so early as the year 1775, the Nawab had of the consequence of this power—

"By this proposal, the Nabob is desirous [of promoting your Highness's quiet tranquillity and satisfaction. The Nabob says that, in this case, you will have no vexation, and will constantly receive your stipend] without trouble."*

Supported by Mr. Bristow.

In a letter of the 3rd of January, 1776, Mr. Bristow represents to the Board what, at that period of time, had been experienced of the evils resulting from this system. After adverting to a complaint made by the Begum:—

"In making this complaint"—says he—"the Begum forgets the improper conduct of her own servants, who have hitherto preserved a total independency of the Nabob's authority, beat the officers of his Government, and refused obedience to his perwanna."

My Lords, this is the representation of the Resident to the Board, in the year 1776. I would also refer your Lordships to what actually passed in the year 1781, when—

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* Letter of Mr. Bristow to the Begum.—Printed in the "Minutes of the Evidence," p. 2042.

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Resistance shown by the Begum to the amil of the Nawab Wazir.

"The Nabob Vizier having appointed an aumil to take charge of the Begum's jaghires, she prepared a large body of troops."

These are the words of the Resident representing the case:—

"She prepared a large body of troops with design to resist him."

And he states then:—

"That a violent and threatening letter, which I have just received from the Begum, would seem to leave no doubt of her intentions to support the already declared licentiousness of her servants in opposing the Nabob's orders."*

And then he states, in a subsequent letter, that—

"Her chief agent, Behar Ali Khan, has marched a considerable force into Nabob Gunge, one of her jaghires, declaring that, if any attempt is made to resume it, he will lay the whole country of Gondoor waste."†

Testimony of Major Gilpin to the violence of the Begum.

My Lords, I observe likewise that Major Gilpin, in describing, at a subsequent period, the conduct of the Begum, at the time when he was at Fyzabad, representing the forces he had gathered together, upon this subject, states:—

"I have reason to suppose the elder Begum was very desirous and anxious to begin an engagement."

Position and character of the Begums.

That is in page 894 of your Lordships' printed Minutes. But, my Lords, it has been suggested that the peculiar character of this lady—her maternal tenderness towards her son—the peculiar gentleness of these ladies' manners, added to the secluded situation in which they lived, prevented any possible mischief arising from the power that they held. I conceive that some of these circumstances operate the other way; for, by the seclusion of their situation, they were very much open to the influence of those who were entrusted with the management of their property, and who might easily make a bad use of it. With respect to the peculiar tenderness of the Begums towards the Nawab, and the humanity and gentleness of their nature, I have found it difficult to discover the evidence upon that subject. But I discover, in the evidence adduced on the part of the prosecution, something that produces a considerable doubt on that subject with respect to both these ladies; because, with respect to one of them, in the testimony given by Major Gilpin, in page 894, he represents, with respect to the elder

* Letter of Mr. Middleton to Mr. Hastings, 19th December, 1781.—Printed in the "Minutes of the Evidence," p. 805.

† Letter of the same, 27 December, 1781.—Ibid., p. 722.

25 APR. 1793. Begum, that he has reason to suppose that she was very desirous and anxious to begin an engagement.

"Nay, I am convinced"—says he—"by various corroborating circumstances, that she was resolutely bent and firmly resolved to die, as she had lived, in a rebellious state."

Now this is the account given by the evidence on the part of the prosecution of this gentle lady — one of the ladies who is represented to be a person whose character was such as to preclude any possibility of danger from the power she held. With respect to the other Begum, I observe also in some correspondence, adduced, I think, on the part of the prosecution, some sentiments expressed that do not appear to me to be quite reconcilable with this gentle and amiable conduct that is imputed to her. For I observed, with respect to one letter addressed to the Resident, which is in page 814, she calls upon him for a speedy answer, and to countermand the order that had been given for the resumption of her jagirs: —

Threatening language of the younger Begum.

"For"—she says—"the present state of the matter is trifling, but the consequence shall be great."

And, in her next letter, we have a sentiment I suppose reconcilable entirely with her tenderness. She says —

"Note this: that if my jaghire falls, the country shall not stand. Remember this, and make the Nabob acquainted with it."

These are the sentiments of the other Begum. That letter is in the printed Evidence, page 815. In another letter, given in evidence also on the part of the prosecution, there is this expression :—

"Should the country be lost to me it shall be lost to all. I give you this intimation: note it."

My Lords, there is also another letter from this person, given in evidence on the part of the prosecution, in page 816, containing a sentiment extremely worthy of this lady, who has been held up, I think, as a saint. Your Lordships will find what is the pious ejaculation of this saint. Upon being threatened with the resumption of her jagirs, she says :—

"Should I be necessitated to quit the country"—this is her prayer—"God grant that no soul may be able to remain in it in peace!"

These are the sentiments expressed by this gentle, humane, tender, lady, at the same time that Mr. Hastings' conduct is represented to be full of all the foul cruelty and wickedness that language can express! This is the lady

whose peculiar tenderness and humanity preclude any possibility of danger from the power she had being exercised to the detriment of the country! But we are told that there was no danger at all, because of the peculiar affection that she had for the Nawab; and your Lordships heard a very eloquent and able dissertation upon the nature of moral obligation, and of filial piety and maternal tenderness. There was likewise some very extraordinary written evidence, in order to make your Lordships acquainted with the nature of those duties, in the testimony of Prince Cantemir. 25 Apr. 1793.

My Lords, I perceive in the evidence for the prosecution something that leads me to doubt a little, upon this subject, whether that harmony did exist between the mother and the son;—at least, on the part of the mother, whether it was uniformly exerted in a way to prevent any danger resulting from her power. I find in one piece of evidence, which indeed was not given on the part of the prosecution, but has been given by the Defendant—it is in the printed Evidence, page 1852—I observe in a letter written from Colonel Galliez to the Board, on the 3rd of March, 1775, the Nawab states to Colonel Galliez, even at that early period after the death of his father—for he died upon the 26th of January, 1775,—on the 3rd of March, the Nawab with deep regret states to Colonel Galliez, who was at his court at the time,—

Early hostility shown by the Begum to her son.

"Although it would astonish me, yet he must with regret own that his mother is at present his inveterate enemy; that she had with Elich Khan used every means to distress him."

That is the affectionate tenderness exhibited by this mother to her son, even at that early period of his reign!

But, upon this subject, I should hardly conceive it necessary for me to go into evidence to prove the conduct of this person towards her son, I mean, at the period subsequent to his ascending the musnud; because I observe it to form a part of the Article that we are now considering, that the conduct of Mr. Hastings antecedent to 1781 exhibited a uniform interposition to prevent the ill consequences that would otherwise have resulted from the constant altercation and differences that perpetually prevailed between this affectionate mother and her son. It is there stated, that the English interfered constantly to prevent the Nawab exercising his power to resume the jagirs; that they were constantly at variance for the whole of the time, and were only prevented from open rupture by the interposition of the English.

Frequent interposition of Mr. Hastings prior to 1781.

25 APR. 1793.

The general right of resumption and policy of the measure.

I conceive, therefore, that there can be no doubt entertained with respect to the right, independent of any reference to the treaty, of the Nawab to resume the jagirs, giving an equivalent to the Begum; nor any doubt entertained of the wisdom and the policy of the measure in putting it upon a different footing—in taking it from those persons who, from their sex and their seclusion, ought to be better satisfied with a full equivalent in money, if that money was properly secured to them and relieved from the trouble that must attend territorial property—the management of troops and all the politics that belonged to it; which, if they had no improper ambition or lust of power, they ought to be satisfied with; and which was an ample means of support. I trust your Lordships would have entertained no doubt, upon this part of the case, supposing no treaty had ever been made upon the subject, that, if no treaty had existed, the measure was a right and a prudent one. This will conclude what I have to offer upon this part of the case respecting the jagirs, in this state of the business.

Seizure of the treasure.

The other subject for your Lordships' consideration is the treasure. And, with respect to that, it is certainly a question of great magnitude and importance; for the amount of the treasure is no less, even in the lowest computation of it, [than] the sum of 2,000,000*l.* sterling. It was generally believed to be more than double that sum; but even in the lowest estimate of it, as it has been given in evidence on the part of the prosecution already, it was not less than two krors of rupees. Your Lordships know that this is a sum equal, at least, to 2,000,000*l.* sterling. I find, in two letters of Mr. Bristow, he represents that to be the extent of the treasure. One is a letter of the 2nd of March, 1775, which your Lordships will find in the printed Evidence, page 1826; in which he states,—

Mr. Bristow's computation of the amount in the possession of the Begum.

> "That the whole treasures amassed by the late Vizier amounted to, at least, two crore of rupees."

And in another letter, in October, 1775, which is in the printed Evidence, page 440, he says:—

> "It is generally believed she has four crore, which is 4,000,000*l.* sterling, but I fancy I may venture to say she has one crore seventy lacks."

This was in the month of October, 1775, after twenty-six lacs had been actually delivered up, which, added to the one kror and seventy lacs, makes up the total to be very near the

representation given before — a total of near 2,000,000*l*. Therefore, in the outset, I beg leave to observe that the amount of the sum concerning which this question arises is, at least, 2,000,000*l*. sterling. 25 Apr. 1793.

Here, my Lords, on the part of the prosecution it is contended, that the right to the whole of this sum of money entirely was in the younger Begum—the Bow Begum as she is called—the widow of the late Suja-ud-Dowla. Upon that ground, it is stated that the seizure of a part of it, in the year 1781, was a confiscation of her property. Upon that ground, it is stated that she out of it exercised all that liberality to her son, in the early period of his government. Upon that ground, it is stated that she, out of that money which was her own, purchased a right to the treaty that was entered into with her in October, 1775. The whole of this part of the case, and all the Charge that represents it as an act of cruelty, independent of the treaty, and an inhuman pillage of the younger Begum, independent of the right derived under the treaty—all that is founded upon this hypothesis. Now, is that true or is it not? Assumption of the Begum's right to the treasure by the prosecution.

I assert, my Lords, and I pledge myself to prove it, that the Begum was not intitled to a single rupee; that, by all the evidence that is now before your Lordships, written and parol, there cannot be a doubt about it; that it is perfectly clear, upon this part of the case, the honourable Managers in support of the prosecution have proceeded altogether upon erroneous principles, and have here again, upon this other subject of property, given to the Begum a right that she herself did not contend for and that never was disputed in India, and have taken from the Nawab a right established by all the evidence, written and parol, on the subject. contradicted by the evidence.

My Lords, I beg leave to say that, in the result of this inquiry, your Lordships will find that the conduct of the Begum, which is represented on the part of the prosecution to have been a conduct of generosity, tenderness and affection, to her son, was a conduct of gross and scandalous fraud, of wicked cruelty towards her own son in the midst of his distresses—that she endeavoured to embezzle the public money—a property which belonged, every rupee of it, to the Nawab. It was a wicked attempt, on the part of this person, to embezzle the whole of it, and to retain it by force and violence, by the power she was allowed impoliticly to hold; to rob the public of all that money which was entrusted to her custody, merely as a treasurer! Your Lordships will Fraudulent conduct of the Begum towards the Nawab.

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Present wealthy condition of the Begum.

find, in the result of this examination, the facts to be directly the reverse of all that is stated on the part of the prosecution, and that to this moment is this injured, oppressed, ruined and degraded, woman in possession of no less than 1,000,000*l*. sterling; one moiety of which property unquestionably belongs, *de jure* and originally, to the Nawab and to the country.

Question of title to the treasure.

My Lords, we are now at issue with the prosecutors upon this subject. I will state to your Lordships what is now the result of the evidence upon this subject. And, in a question of title and property, I will appeal to every one of your Lordships, if there ever was a case in a court of justice more clear than this is to establish the right of the Nawab, and to negative any right on the part of the Begums.

Admitted to have been the property of Suja-ud-Dowla.

I should state to your Lordships that there is one proposition upon which both sides are agreed, that is, that this personal property did originally belong to Suja-ud-Dowla, the deceased husband of that lady. That proposition we are both agreed in; because your Lordships will find that, in setting up a title in the Begum to this money, which title she never set up for herself, but which has been discovered in England, your Lordships will find it is a title attempted to be derived for her under her deceased husband, which consequently admits the property to have originally belonged to him.

My Lords, we are also agreed as to the place where the sum was deposited, and the amount of it: that it was all deposited in the palace of the deceased prince; that it was kept in the most secure part of it; deposited, according to the custom of the East, for the purposes of safe custody, in the zanana; that the whole of it was there at his death, which happened on the 26th of January, 1775.

Law of Hindustan respecting claims upon the estate of a person deceased.

Now, in the first place, let us consider this subject in every possible point of view where a right can be set up upon the evidence before your Lordships, and see how, in every instance, the proposition contended for on the part of the prosecution fails. It is in evidence before your Lordships that the established law of Hindustan is what the law is in this country—supposing it to be a question between subject and subject, which is the fairest possible way of considering it for the Begums. The established law is, that debts have priority over every other mode in which personal property can be acquired under a deceased person. That I may not be supposed to misrepresent a single syllable upon the subject, I will, upon all occasions where I can, endeavour to

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present to your Lordships the proof. In the printed Evidence, page 1833, there is this passage from "The Hedaya, or a Comment on the Mussulman Laws:"—

"If the estate be completely overwhelmed with debt, [neither composition nor division of it amongst the heirs is lawful, because the heirs are not, in this case, masters of the property, as inheritance takes place only with respect to such property as is unincumbered with some essential requisite of the deceased; and the payment of the debts of the deceased is one of his essential requisites. If, also, the estate be not completely overwhelmed with debt, it is not even then becoming to enter into any composition until the debts be discharged.]" *

The first proposition, therefore, that I stand upon is this:—that, if debts did exist, and this had been the case even of an individual, the creditor would be first intitled to this fund. The only question then is, whether the late Nawab, Suja-ud-Dowla, did or did not leave any debts at the time of his death. Now, upon that subject, I will refer your Lordships to the printed Evidence, page 2008, wherein it appears that he died indebted to the Company to the amount of 480,000*l*.. And your Lordships will find in the printed Evidence, page 1850, that the present Nawab did, in point of fact, take upon himself all the debts of his father that were actually due to the Company, by a separate agreement made for that purpose at that time. In the next place, your Lordships will find that the late Nawab was indebted to his army to a very considerable amount; the arrears of his army amounting, even in the most moderate estimate of them, to 1,500,000*l*. sterling; for your Lordships will find the Nawab states his situation in a letter which we have given in evidence, in page 1827. He there says:—

Debts of Suja-ud-Dowla to the Company acknowledged by his son.

Arrears due to the army.

"If the income of the soubah was adequate to the disbursements, [how did it happen that my late father, at the time of his decease, was greatly indebted to the English chiefs, and two years] in arrear to his army?"

There are other passages to the same effect, in which he states that the revenues were inadequate to his immense expenses; and also that he owed very heavy debts to the English chiefs. And then he states, that he had discharged two years' arrears to the army. What then was the annual expense of the army, two years in debt? It is also proved before your Lordships that the number of troops the late Nawab had at the time of his death was about 100,000 men; and the actual total of the expense *per annum* of this

* The Hedaya, or Guide. Translated by Charles Hamilton, Lond. 1791; vol. iii. p. 209.

25 Apr. 1793. army was, according to the estimate given by Mr. Bristow, one kror and ninety-eight lacs, which is very near 2,000,000*l.* sterling. The amount of the arrears to the army would be very considerable indeed, if we were to estimate it according to the data I have laid before your Lordships. But I do not wish to state it to that extent, but to take it, upon a very moderate estimate, that there were due to the army no more than to make up the debt to the army and the Company 2,000,000*l.* sterling. And that is a moderate estimate; for it is proceeding upon a supposition that the army was only nine months in arrear. It would amount to 1,500,000*l.* sterling if the army was only nine months in arrear; and that added to the 500,000*l.* due to the Company would make up a total of 2,000,000*l.*

Evidence respecting the arrears.

I would also just observe to your Lordships that it does not rest merely on the assertion of the Nawab that there was that arrear due to the army, but that is confirmed by all the documents we have laid before your Lordships representing the state of the army at the time, and by the account of Mr. Galliez, within three weeks after the death of the Nawab's father, which is in page 1842 of your Lordships' Minutes:—

"I am conscious, from the Nabob's anxious desire of obtaining your favour, that he would have paid the whole amount of the immediate demands of the Company on the late Vizier, but from the necessity he has been under of satisfying his troops, who were beginning to discover a mutinous spirit in their demands of the large arrears due to them by his father."

This is an account given on the 12th of February, 1775, within less than three weeks after the death of Suja-ud-Dowla.

The circumstance of arrears to the troops is also mentioned in Mr. Bristow's letter of the 20th of April, 1775, which is in the printed Evidence, pp. 1886 and 1887. It is also stated in the printed Evidence, page 884, on the part of the prosecution. The fact, therefore, of there being these arrears due to the army at the time of Suja-ud-Dowla's death is established by all the evidence upon the subject. Besides that, there were considerable private creditors of the late Nawab, whose demands also came upon the present Nawab. Your Lordships will find this also established by evidence on the part of the prosecution; for, in pages 496 and 497, in the printed Evidence, in a letter from the Nawab, he states the circumstances of the difficulties he was exposed to by considerable arrears that were due to private creditors. He says:—

Claims of private creditors on the estate of Suja-ud-Dowla.

"There is at present no part of the country that can be allotted to the payment of my father's private creditors, whose applications are daily pressing upon me. All these difficulties I have for these three years past struggled through." 25 Apr. 1793.

This is in the year 1779. He states, therefore, the private creditors of his late father to be pressing upon him for payment at that period of time.

I conceive, therefore, that I have established these propostions:—first, that by the law [of the country] these debts had priority upon the fund left by the late Nawab; and, secondly, the existence of those debts, at least to the amount of the whole sum with which I charge the Begums, by the evidence adduced on the part of the prosecution. I conceive, therefore, that I have established the right of the Nawab, in that character, as representing all the creditors whose debts he took upon him to discharge, whose debts he was bound to discharge, whose debts he took upon him for his own personal safety to discharge, bound by the applications made to him on the part of the Company to discharge the debt. I conceive it to be perfectly clear that every rupee of this fund, in this character, clearly belonged to the Nawab. I choose to rest upon this character, without introducing any possible doubt or perplexity with respect to any other titles. That is, the title that he would have as heir to seven eighths of the property, which is also established by the law; she being intitled to only one eighth, which would only intitle her to 250,000*l.*, instead of 2,000,000*l.* But that division, as it could not take place till after the debts were paid, and likewise as no will existed—at least of which there is proof, except a suggestion in one of Mr. Bristow's letters of a will which was supposed to exist, but was secreted by the Begum, and we therefore may presume was not in her favour. But, without resorting to any other titles, I stand upon this clear, undoubted, right by the established law of the country, that the Nawab—nay, even if it had been the case of a subject, a subject—was clearly intitled to every sixpence in the Begum's possession, for the purpose that I stated. At the same time that I have stated this broad and clear title on the part of the Nawab, I do not mean to say that this negatives the possibility of the title that is set up for the Begum on the part of the prosecution; because it is there contended that the Begum was intitled to the whole of this money by the gift of her husband.

The Nawab assumes the liabilities of his father.

Inherits a right to the treasure.

Suspected suppression of a will by the Begum.

That I may not be supposed to misrepresent it, before I examine the truth of it, I will read the proposition advanced by the honourable Managers. It is in page 439:—

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Title by gift set up on behalf of the Begum.

"The Managers for the Commons informed the House they would now proceed to prove the right of the Bow Begum, the mother of Azoph ul Dowlah, to the treasures given her by Sujah Dowlah; also the treaty in the year 1775 and 1776"—

your Lordships will be pleased to attend to this expression—

"by which her right to these treasures was allowed and confirmed by the Vizier, and guaranteed by the Council at Calcutta."

That is the proposition.

I will show your Lordships, with respect to this assertion also, that it is an assertion that not only stands without proof, but against proof—against the clearest evidence, written and parol, to establish the direct reverse of the whole of that proposition, in every part of it.

Absence of proof.

My Lords, in the first place, I insist—and for that I refer your Lordships to the evidence—that, of this supposed gift by Suja-ud-Dowla to the Begum, there is, in the first place, no deed, no grant, no paper, to convey this title to two millions of money; next, that there is not a single witness to the gift. And yet your Lordships will find that this supposed gift, if it took place at all, must have taken place at repeated different periods of time; because your Lordships will find that the treasure that I have stated was the result of several years accumulation, and therefore must, in the act of accumulation from year to year, have been the subject every year of a repeated renewal of gift.

Gradual accumulation of the sum.

It is pretty extraordinary, if a gift was made by Suja-ud-Dowla to the Begum of so large a sum, that it should be made even in a single instance without some paper, some witness, to support it. That difficulty multiplies with the number of years that the treasure was accumulating. There is, therefore, no evidence, written or parol—no witness of that sort to establish it. Let us see, then, whether there are any other witnesses brought on the part of the prosecution to prove the fact of the right of the Begums in this way. The first evidence that is produced, immediately after the honourable Managers had stated that "they should now proceed to prove it"—the first witness that they produced is Mr. Bristow.

Letters of Mr. Bristow adduced in support of the Begum's title.

Mr. Bristow was the agent sent up by the majority, as they are generally termed—by General Clavering, Mr. Monson and Mr. Francis, in the beginning of the year 1775; and whose conduct at that time, and the situation of affairs at that period of time, have been represented to your Lordships to have exhibited the only halcyon days that India

ever saw—the period of 1775 and 1776—during the time that these gentlemen had the sway in the Government of Bengal, and sent up their agent to Oude to manage the concerns of that country. The first witness produced is Mr. Bristow. Being on the spot a short period of time after the death of the late Suja-ud-Dowla, being the Resident there, and having means of knowledge, I presume he was thought to be a witness who was most likely to give competent testimony upon the subject. When I say he is produced, I mean the letters of Mr. Bristow are produced—two letters written in the month of October, 1775, for the purpose of proving this gift. I beg your Lordships will have the goodness to read the letters. I have read them with attention. I am not able to discover that, in these letters, there is one single sentence that supports the proposition; not an expression, as well as I can read and understand them! They all tend to establish a contrary proposition, and to show manifestly that, in the opinion of Mr. Bristow, the Begum had no right by gift to this treasure at all.

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Contrary inference.

I will, with your Lordships' permission, read a passage from the first of these letters which is produced, which is in page 439. He states, that he—

"Went to Fyzabad, and explained particularly in writing to the Begum how impossible it was for the Nabob to conduct his government without her assistance, and likewise insinuated to her that she could not complain of him, for he had granted her an additional jaghire of four lacks a year for the sum he had already borrowed of her, and treated her with great respect. I further insinuated to her that the treasure she possessed"—

your Lordships will, I presume, expect now the words *are a gift to you*—

The treasure represented by Mr. Bristow to be the property of the state.

"That the treasure she possessed were the treasures of the State, as she had not succeeded to them by any legal right, and they had been hoarded up to provide against an emergency; that that emergency was arrived; and I recommended it to her to spare his Excellency the sum of fifty lacks as a donation; but, if this did not please her, to let the treasure be divided according to the laws of the Koran, or else, grant him a loan and I would engage for the re-payment of it."

Now, my Lords, take the whole sentence. Though there are different modes proposed to the Begum to induce her, who was withholding the money by force from the rightful owner, to part with it in the shape of loan or gift, yet Mr. Bristow distinctly states to her that she had no right to it; that it belonged to the state; that it had been hoarded up

25 Apr. 1793. to provide for an emergency; and that she had not succeeded by any legal right to it. He then states:—

His opinion of the ill-treatment experienced by the Nawab at the hands of his mother.

"It was hard, when reduced to such distress, that his mother should uselessly keep up immense treasures."

The other letter, which is in page 440, is upon the second representation made by Mr. Bristow to the Begum. He says:—

The Nawab's right admitted by Mr. Bristow.

"My representations since my arrival this time have tended to prove to her Excellency that the Nabob's situation was desperate, and she might have determined on what rash resolutions she pleased in her own mind: still it was now a question whether the Nabob should seize his right, or suffer a lack of souls to perish and the sovereignty of these soubahs, now in the fourth generation, to be transferred to another family."

"Whether the Nabob shall seize his right?" This is the witness to establish that she was intitled to them by gift!

My Lords, these are the two documents produced under that head in which the honourable Managers state to your Lordships they are now proceeding to prove the Begum's right. In order to complete this testimony of Mr. Bristow, to confirm the evidence of the prosecution upon this subject, which has, as far as it has gone, shown that the testimony and opinion of Mr. Bristow was not in favour of any gift but the contrary, I will produce to your Lordships three other letters of the same gentleman, written about the same period of time, and which are in evidence before your Lordships. One of them is a letter written on the 2nd of March, 1775, which is in pages 1886 and 1887; in which he states—

The treasure entrusted to the Begum as a deposit.

"That the whole treasure amassed by the late Vizier, during the five or six last years of his life, amounting to, at least, two crore of rupees, was from time to time, as received, always deposited with the Baboo Begum. On the present Nabob's accession she retained it in her possession, without having disbursed any part of it but for her own private expenses.

Now I will only observe there, that, in giving the account of it, he represents it as a deposit in that place with the Bow Begum, exactly in the way that we have represented it to be, not for the purpose of gift, but for the purpose of a deposit—to provide against an emergency. Another letter of Mr. Bristow's is written on the 9th of September, 1775, page 1891. There Mr. Bristow, after having stated a dispute existing between the Nabob and the Begum, says,—

"The original cause of it is that his Excellency wanted to receive a considerable part of the late Vizier's treasure; [it being the Mussulman law that one eighth of the estate of a deceased person should descend to the widow, and seven eighths to the sons and daughters. Now the Begum has withheld the whole; of the injustice of which the Nabob complains, as he is in the greatest distress, and there is an immense sum lying uselessly] in her hands." 25 Apr. 1793

There is another letter also of Mr. Bristow at a subsequent period—a letter of the 3d of January, 1776—in page 1827 of the Minutes, in which he more distinctly states the nature of this property; and your Lordships will find this, being a subsequent letter, is therefore stronger upon that subject. He gives this account of it:—

"I understand the late Vizier deposited the surplus of his revenues with the Begum, and having died intestate (or, at least, a will was never produced, [though one is said to be secreted by the Begum) it left a door open to the disputes which have happened; for, according to the Koran, and the usages of the country, the Nabob could claim an infinitely greater share than he has got. It is beyond] a doubt she has money."

Now I will beg your Lordships' particular attention to a circumstance that is stated in this letter, disclosed by Mr. Bristow to show clearly what was his own opinion, and what the opinion of a very important witness whose testimony he mentions in this same letter. The witness I speak of is the confidential minister of the Begum herself. I will show your Lordships, from the acknowledgment of that person himself—a person best acquainted with it—in whose actual custody the treasure was found afterwards, in the year 1781, when it is described to have been with difficulty dug out of the houses and the secret recesses in which these persons had endeavoured to conceal it—the person who had a particular interest in keeping the money in his possession, which the confidential minister of the Begum is, in this same letter, in the year 1776, by Mr. Bristow represented to be—[that the treasure was intended not as a gift, but to supply an emergency]. Mr. Bristow represents, in a letter of the 3d of January, 1776, which is the one I have just stated to your Lordships, and which is in another part of the evidence given at length, only an extract being given in that place I referred your Lordships to:—we gave it in evidence the last day, I cannot, therefore, refer your Lordships to the page, but I cite it from the Appendix: it is in page 16:—he states—

Confidential position of Behar Ali Khan in the service of the Begum.

"That, on the Nabob Azoph ul Dowlah's accession [he at once placed the sole management in the hands of Murteza Cawn, which disgusted

25 Apr. 1793. both her and her adherents], particularly her eunuchs, who had their views in keeping the wealth in the Begum's possession. The principal, Behar Ali Khan, enjoys her entire confidence."

My Lords, I cite this passage for the purpose of establishing this proposition—that the person whose testimony I am now going to adduce was in the entire confidence of the Begum, and was interested in keeping the wealth in his possession. What account then does this person give, whose interest must have been in favour of the Begum? In the same letter, Mr. Bristow states that—

The treasure intended to supply an emergency:

"Her principal eunuch brought him a message one day—not as a matter of any secrecy or confidence—that the wealth the late Vizier had amassed was intended to supply an emergency."

There is a distinct account given of the person to whom it originally belonged, and the purpose for which it was accumulated—not for the purpose of gift, but for the purpose of emergency, which is exactly the account we have given. I therefore conceive, from this testimony, which the honourable Managers first began with referring to—the evidence of Mr. Bristow—from all the letters that appear from him upon the subject—in the two adduced on the part of the prosecution, and the others which we have adduced—that the inference really resulting from it is to show that no such gift really did take place.

not the subject of gift to the Begum.

Alleged admission by the Nawab of the Begum's right.

The next evidence that the honourable Managers adduce, in order to support their proposition, is a reference to the admission of the Nawab. They state that the Nawab admitted the right of the Begum, and never disputed it. That is in page 455:—

"The honourable Managers acquainted the House they had now concluded the head of evidence which related to the right of the Bow Begum, the mother of Azoph ul Dowlah, and desired the House to observe that these rights had never been impeached by the Nabob or anybody else; on the contrary, they had been admitted to her, as far as the jaghires and the treasures within the zenana."

Never impeached by the Nawab? I will show your Lordships that this person, who is stated never to have impeached the right of the Begum, always impeached it. It is a pretty singular circumstance if it should turn out that, in two instances, the honourable Managers have stated to your Lordships that that always existed which never did exist; and that that never did exist which shall appear always to have existed!

Now, upon this subject [of the Begum's right,] they have stated that the Nawab never did impeach it. The first

evidence in order to show the direct contrary to be the fact is evidence of the Managers themselves, who have, in a few pages distance, stated the direct contrary themselves! In your Lordships' Minutes, in page 440, you will find:— 25 APR. 1793

The contrary stated by the Managers.

"The Managers for the Commons requested the House to observe that, in these letters, the treasures stated by Mr. Hastings as belonging to the State are claimed by the Nabob as his right."

And then, in a few pages afterwards, in 455, they state that the Nawab never made any such claim at all. So that, in the course of fifteen pages, there is upon your Lordships' Minutes a direct contradictory assertion; in one place stating that he never did it, and in a few pages more stating that he actually did it, and producing an instance of it, in order to prove that the Nawab actually admitted the right of the Begum! A very singular piece of evidence indeed is produced, which the honourable Managers themselves have shown is perfectly inapplicable to the subject, and had pointed out to your Lordships' attention that it is so; for they quote the sentiments expressed by the Nawab in 1776, after the treaty of October, 1775, applicable to another subject, namely, to the subject of certain effects and goods respecting which there was a dispute with the Begum. And the Managers particularly desire your Lordships to observe that all that is said upon that subject has reference only to that particular subject, and ought not, therefore, to be applied to the treasures; and, with a very extraordinary degree of ingenuity, they impute to Mr. Hastings that he always laid a particular stress upon this which they themselves lay the whole stress upon, and which is the only thing they have to rely upon.

Irrelevancy of evidence produced by the Managers.

The honourable Managers quote the Nawab's sentiments respecting this dispute that had happened; and, in page 443, your Lordships will find that they state that a dispute afterwards arose, after having stated the treaty between the Nawab and his mother, respecting some part of the goods:—

Dispute, after the treaty of 1775, relative to goods not in the zanana.

"That those goods which consisted of elephants and military stores were not in the zenana, and, therefore, though the Nabob in the course of the dispute admitted that everything in the zenana belonged to the Begum, he asserted that these goods were the property of the State."

"The Managers for the Commons further stated that Mr. Hastings in his Defence, where he quotes Mr. Bristow's letter on this subject, states this dispute about the property not in the zenana as if it had been a dispute about the whole of the property; whereas it was expressly stipulated by the treaty just read that part of the thirty lacks should be paid in goods; and they should next proceed, therefore, to prove that the complaint then was of that treaty not being abided by."

Misrepresentation by the Managers of Mr. Hastings' views of this dispute.

25 APR. 1793. In page 454—

"The Managers for the Commons state that they have now laid before the House the whole of the dispute relative to the goods."

A dispute relative to the goods, your Lordships will observe; upon which dispute so much stress was laid by Mr. Hastings in his Defence. Now the stress laid by Mr. Hastings in his Defence is not in the least upon this dispute. But Mr. Hastings says, in his Defence, what I have taken the liberty of stating to-day, that the opinions stated by Mr. Bristow, in the course of his communication with the Begum on the subject of that dispute, did express a sentiment with respect to their right to the treasures. And your Lordships will there see the passages I have quoted in Mr. Bristow's letter, and which are the passages referred to by Mr. Hastings in his Defence, and upon which he properly laid some stress, to show that they are clearly applicable to the treasures, and express an opinion upon that subject.

Of the Nawab's admission relative to the goods in question.

But here the honourable Managers state that Mr. Hastings laid a stress upon the dispute relative to the goods. Now it is they that do that; because the Nawab here only admits that the goods, which after the treaty had been made, were in the custody of the servants of the Begum—for that is the expression of the Nawab—belonged to the Begum. The passage that they quote for that purpose is in page 443, in which they state the Nawab says, he acknowledges her right to anything in trust with her own servants, but all other effects belong to him. Now I say that this admission of the Nawab does respect, as indeed the honourable Managers have stated it does, a partial question respecting particular goods, and respecting a question that arose subsequent to the treaty of October, 1775; by which treaty, for the first time, she had acquired a right, and concerning which right the question arose in 1776. Anything, therefore, that the Nawab said at that time and upon that subject can have no possible application to the subject of the general right to the treasures in the zanana. Therefore, I say it is the honourable Managers who lay the stress upon that dispute, and not Mr. Hastings, as I will now show. The honourable Managers not having actually produced any one letter to prove this assertion, that the Nawab admitted the right to the treasures and that he never impeached it—they not having done that, I shall, in the first place, refer to a letter produced on the part of the prosecution, by which they directly negative their own assertion, and which shows

Assertion of his silence as to his right.

that the Nawab did make this claim. It is in page 816 of the printed Evidence. The Nawab states:— 25 Apr. 1793.

"After the death of my father, whatever was due from him to the Company, also to the troops, I took upon myself. Whatever effects there were remained with my mother. Some time since she gave some part to me, but it went no way in the discharge of the claims of the Company or the troops. For these many years I have endured much inconvenience and trouble for the discharge of these; yet half is not made good, and I am in daily anxiety on this account from a desire to discharge all just dues to the Company. It is my intention to proceed to Fyzabad in ten days, the mohrum being over, when I mean to request of my mother the whole of my father's estate, to enable me to pay off all debts to the Company. Agreeable to the laws of God, all my father's effects are my right, that I may make good all claims on him. If my mother from affection consents, I shall be happy."

This is the person who never impeached the right! Perhaps it may be said that this letter comes under the head of a new coined [canon],* which your Lordships will find is stated in page 794, and by which, whenever any letter is produced or referred to on the part of the Defendant, which establishes anything that makes against the prosecution, it is at once disposed of by stating it to come under the head of "subornation of letters." Charge of subornation of letters.

"The Managers for the Commons acquainted the House they would next proceed to a head of evidence which they should call subornation of letters,—in order to show that, besides the general practice of suppressing correspondence, Mr. Hastings and Mr. Middleton were themselves the fabricators of almost all the letters of the Nabob which were favorable to their views."

So that perhaps I am to be deprived of the benefit of that evidence, because it is a letter written at the time of Mr. Middleton's agency, and which, therefore, comes under the head of "subornation of letters." Then, in order to show your Lordships that the sentiments expressed by the Nawab in that letter are conformable to the sentiments he always entertained, and expressed at the time, during the residence of Mr. Bristow, who, I presume, is not guilty of the same practice of subornation of letters, I shall produce a letter written by the Nawab in the year 1776, which is in the printed Evidence, page 1827. I will read to your Lordships from this document the sentiment of this person, at that time, who is stated never to have impeached the right, but to have admitted it to belong to the Begum. He says, page 1828:—

"Reflect for a minute that women can have no business with artillery and money; that I being heir to the dominions and property of my late Statement of the Nawab of

* The MS. reads "column."

25 Apr. 1793. father, and having taken on myself to be responsible for his debts, it is equally inconsistent with reason and justice that his treasures should be appropriated by the women. The Begum has been led into all these measures by a desire to give the treasure of my father, which amounts to a very large sum, into the hands of the eunuchs, and to dissipate it in whatever manner she pleases, leaving me involved in these debts [and in the utmost distress to compass the re-establishment of] my affairs."

his right to the treasure.

Again, he says, in page 1829:—

"The revenues of my country are fallen very short this year, by reason of a drought. [What remains is not sufficient for the pay of my army; and my mother has possessed herself of all the treasure and effects in the house. How then am I to support] the necessary expences?"

He then again says:—

"The true design of all that my mother has said is a desire to appropriate all the treasures collected by my late father for the discharge [of his debts to her own use, and not to give a single daum of it to me. Observe, my friend, that my income, as I have mentioned above, is not by any means adequate to the expense of my troops, etc., and that the treasure left by my late father has been appropriated by the Begum to her own use. From what fund then am I] to discharge my debts?"

Objection of the Managers to the admission of the Nawab's letter.

He then states the debts with which he was encumbered, and, in other passages, repeats the same sentiments. Therefore, I take it, this letter, of the year 1776, which your Lordships will recollect was a letter which, when we offered it to your Lordships, conceiving it to be material evidence, an attempt was made on the part of the prosecution to prevent being received, and an argument was addressed to your Lordships to endeavour to persuade your Lordships to reject it as incompetent, and to prevent this evidence being given — I certainly will not, though it tends to controvert a proposition asserted by the honourable Managers, repeat the expression of "suppression of correspondence" which is imputed to Mr. Hastings—but this letter might have cleared up the subject upon this point. Where an assertion had been made that he never did impeach it, it was surely, as your Lordships determined, very competent and proper evidence upon the subject, in order to negative the assertion of the honourable Managers, that, in truth, the Nawab uniformly made this assertion.

There is also another letter of the Nawab, which is in page 1900, in which he states:—

Repetition of his claim on the part of the Nawab.

"On the decease of the late Nabob, I was left under a great load of debt on account of arrears to the troops [and money due to the English chiefs; and the goods and effects of the said Nabob, to a very great amount, were in the possession of my mother, who refused to pay the least attention to my representations to her and applications on this head. At last, to prevent any ill constructions being put on my conduct, I

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obliged Mr. John Bristow, very much against his inclination, to be the mediator of an agreement. The matter was accordingly settled at 30 lacks of rupees, and an engagement concluded. Although my mother was possessed of goods and effects to a very great amount, of which I was well acquainted, yet I did not turn a thought that way, but entered into the aforesaid engagement. Nevertheless, out of the 30 lacks stipulated, 11 lacks are yet due, exclusive of the above mentioned effects. My mother appropriated to her own use great quantities of furniture and goods, belonging to the household, which were not in the mahal. Mr. Bristow is well acquainted with this circumstance. My friend, the engagement was also for a few days only, which I told Mr. Bristow at the time. But my mother has even destroyed that, by not complying with the terms of her agreement. How, then, is this treaty binding? Reflect, my friend, on the immense load of expense I labour under, and the smallness of my income, on one side pressed for the arrears of the forces, on the other for the payment of moneys to the English chiefs, to whom I am still indebted a very large sum, which it is necessary to make good before all other payments; and moreover, that, by reason of a great drought, my revenues have this year fallen very short. Reflect, I say, on these circumstances, and how I am to make good all the demands on me. Is it just that the goods and effects left by my father, which amounted to a very great sum, should remain in the possession of the women, when I am the heir to my father's wealth, and have taken on myself the payment of the debts he left behind? Surely this would be highly unjust."]

And then he says :—

"I have written every particular, being aware that false representations may be made to you on this subject. You must pay no regard to such."

I hope your Lordships will pay no regard to any representations—not false, but inaccurate ones—that are made upon this subject of the Nawab's sentiments, expressing that he never did impeach what he uniformly did impeach! I have now shown your Lordships that many of the persons referred to as establishing the right, namely, Mr. Bristow and the Nawab, by testimony on this subject, as far as it goes, establish the contrary.

Allegation of Mr. Hastings' support of the right of the Begum.

The next head upon which they endeavour to support the claim is by a reference to Mr. Hastings; and they state to your Lordships that Mr. Hastings himself admitted the right of the Begum to this treasure. Your Lordships will find that asserted in page 455. The honourable Managers there state that the rights of the Begum had been particularly upheld and supported by Mr. Hastings, and that they should proceed to show that—

"Mr. Hastings, in his Defence, asserts that he was always a friend to the Nabob's right to reclaim the treasures; they, therefore, should next proceed to show that he resisted the whole of the Nabob's claim to the treasure, and asserted the right of the Begum."

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Now, my Lords, I could have wished that that had not been stated in a form and manner which, if your Lordships do not attend to dates and circumstances, may be very apt to mislead; because the admission of Mr. Hastings of the right of the Begum, when it comes to be explained and cleared up by the evidence, is clearly an admission that has no application to the subject; and everybody that reads it must see that it has none. The passage that is immediately quoted from Mr. Hastings is in a debate on the 3rd of January, 1776, which is, your Lordships see, some months after the treaty; and your Lordships will see that it is uniformly confined to the right derived under the treaty to the sum she was intitled to, and applies to nothing else. It has no application to that which is here stated and endeavoured to be connected with it, namely, a supposed admission of the right by Mr. Hastings, negativing his defence to the right antecedent. The passage is in page 448; and he states, in language that does him honour, and shows the humanity of Mr. Hastings in every thing towards those persons, speaking of the claim that was made relative to this dispute about the goods, upon the reference made to the Board on that subject:—

The Begum's right derived from the treaty of 1775.

"All my present wish is that the orders of the Board may be such as may obviate or remove the discredit which the English name may suffer by the exercise, or even the public appearance, of oppression on a person of the Begum's rank, character and sex. Had the Nabob chosen to have made use of the means with which his own power alone supplied him to exact money from the Begum his mother, this Government would have wanted a pretext to interfere in her behalf."

Mr. Hastings' motion on the subject.

Now, my Lords, attend to what follows:—

"But as the representative of our Government has become an agent in this business, and has pledged the honour and faith of the Company for the punctual observation of the conditions under which it was concluded, we have a right to interfere; and justice demands it, if it shall appear that these engagements have been violated, and an injury offered to the Begum, under the cover of the authority by which they were contracted. I am, therefore, of opinion, and I recommend that a letter be written by the Board to Mr. Bristow, commanding him to remonstrate with the Nabob against the seizure of the goods as his own original property, which he received from his mother in payment of the eleven lacks stipulated to be so made;—to insist on the Nabob's receiving them in payment."

Grounded on false representations made by the Begum.

Now, as to that eleven lacs which was part of the sum stipulated by the treaty to be paid in goods, her complaint to the Board was, that she had tendered goods in part of

payment, and the Nawab would not accept them. And Mr. Hastings says, believing her representation to be true, that the goods were right, and the Nawab refused to take them—"Let us interfere immediately, because the treaty has been made with the guarantee of the Company, and insist upon the Nabob's taking these goods:" supposing the fact to be that the goods turned out to be the Begum's, and were refused to be taken by the Nawab. But, when that subject was introduced, I could have wished that it had been followed by an explanation of what passed afterwards, when, upon the subject being inquired into, it turned out that all the representation given by the Begum—or the greatest part of it—was not true; that this debate proceeded upon a supposition that it was true, but upon inquiry it turned out not to be true. And, indeed, the honourable Managers seem to have been perfectly aware of that; because they themselves state, in page 450, as to one part of the Begum's complaint, in the same letter, upon the subject of Mr. Bristow, that, upon a subsequent inquiry into that business, it turned out that her complaint was false, and that Mr. Bristow's conduct was perfectly right. That they state in page 450. By the account afterwards given, upon a reference to Mr. Bristow to know the truth, it turned out that Mr. Bristow was not guilty of what the Begum had suspected him and charged him with. By the same evidence, it is shewn that her representation respecting the dispute turned out also to be ill founded; and the Board expressly directed that that letter should be sent in a packet to the court of Directors, in order to clear up the business.

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Explanation forwarded to the court of Directors.

My Lords, I have now adverted to the evidence that has been alluded to by the prosecutor, with the exception, I think, of a few more documents, one of which is, your Lordships observe, the treaty which is stated to have allowed and confirmed that right. My Lords, that treaty is in page 442. And here I am perfectly at a loss to conceive how anybody, reading this short treaty, could have possibly discovered that it contains what the honourable Managers state it does—an allowance and confirmation by the Wazir of a right to these treasures. There is one way in which I can account for it—by reading the treaty and examining it, omitting the most material word in it upon that subject. And, my Lords—I rather suspect—I am sure—it was accidental—in quoting it in the Charge against Mr. Hastings, in the second Article upon this subject, I do observe that that

Perversion of evidence in respect of the treaty of 1775.

25 Apr. 1793. most material word which proves the contrary of this assertion is omitted; for, in referring to it, your Lordships will find in the Article that refers to this treaty—though I do not mean to state it to be an exact copy of the treaty, yet a great deal of the treaty is stated in the fifth paragraph, upon this subject of the second Article—your Lordships will find—I think I cannot be mistaken in it—that one of the most material words in this treaty, admitting directly by both parties to this treaty that what was given up was not the right of the Begum, but was the right of the Nawab—that very word is omitted in the citation of this treaty! The word which I mean is that which shows both parties to have admitted that the fifty-six lacs which were the subject of the treaty, part of which were to be given up by the Begum, were not the right of the Begum, but were the patrimony of the Nawab.

Admission that the treasure formed part of the patrimony of the Nawab.

My Lords, I find that expressly admitted by the very terms of the treaty, in the first three lines of it. The Nawab states,—

"I have now taken from my mother thirty lacks of rupees on account of the present, and twenty-six lacks on account of the former debts, in specie, goods, and so on, from the patrimony of my father, and have no further claim on her."

This is the instrument that, in a very few pages before, in page 439, the honourable Managers state, allowed and confirmed by the Wazir the right of the Begums to the treasures—a right derived by gift to them from Suja-ud-Dowla.

Now, my Lords, I think it requires no argument to prove this proposition:—that the right to the whole of the treasure was either in the Begum or in the Nawab. No distinction has been attempted to be made of this portion of it, the fifty-six lacs, to distinguish it from the rest. In fact, they claim the whole. Having, therefore, shown that, upon the very face of the treaty, there is a clear allowance and confirmation of the antecedent right of the Nawab to the amount of fifty-six lacs, I conceive that, in fair argument, I do establish by the admission of the parties to that treaty—namely, by the Nawab and the Begum—an admission directly to the contrary—that the right belonged to the Nawab, and was not hers.

My Lords, I find this also confirmed more strongly; for, in her letter, where she comments upon this subject, she clearly understands it in this sense. The honourable Managers have given in evidence the letter from the Begum upon this

subject, in page 446. She states, referring to this passage of the kaulnama, or the agreement:— 25 Apr. 1793.

"It is written in the coulnama, I have taken fifty-six lacks of rupees on account of my inheritance."

Abnegation of right on the part of the Begum.

That had been quoted to her. Says she,—

"I sent word that others had a right to part of the inheritance."

Murteza Khan very well answers to that, according to her own account of this conversation:—

"I have taken the inheritance of all."

In a dispute between her and Murteza Khan, according to her own account of it, Murteza Khan referred to the kaulnama admitting the right to the inheritance—"Ah! but" —says she—"there are other persons intitled to the inheritance." Not setting up any right in herself by gift, but setting up a right in other persons to the property of the deceased prince. Murteza Khan, in answer to that, says— "Even if it were so, you have got the whole; you have got what belongs to you."

This is her account of the dispute between her and Murteza Khan.

I find in another part of the evidence, also produced by the honourable Managers, page 454, in another treaty that they have produced:—

"I, Azoph ul Dowlah, according to my agreement, received the sum of thirty lacks of rupees for the present year, twenty-six lacks on account of my old debt, consisting of the following articles—ready money and goods, jewels, elephants, and camels, &c. which have been settled with the Begum, my mother, through the mediation of the heads of the chief of the English, as my inheritance from the late Nabob, Sujah Dowlah, my father."

Admission of the Nawab's right in the agreement with the Begum.

Now there again, in another expression tantamount to the former, he asserts his right, and it is admitted by the other party to the treaty—the Begum.

I would refer your Lordships also to another clear admission, on the part of the Begum herself, that the money did not belong to her, but did belong to the Nawab; that is, Mr. Bristow's letter of the 1st of December, 1782, in which he states, after the act had been done which is stated to be the crime of Mr. Hastings:—

"She says, she had paid away all the money entrusted to her charge by the late Vizier."

Now there is her own account, according to Mr. Bristow's representation of it, admitting it to have been entrusted to

25 APR. 1793. her by the late Wazir, and insisting that at that time all was delivered up.

Assistance afforded by Major Gilpin in support of the Nawab's claim.

There is another passage, page 901, in a letter from Mr. Bristow, in which he says:—

"Major Gilpin with one battalion has been stationed at Fyzabad, for the purpose of supporting the Vizier's claim against the Begum for the recovery of his patrimony deposited in her charge."

My Lords, I conceive, therefore, that I have, by the very same sort of evidence which is referred to on the part of the prosecution, established the negative in every instance, without a single dissentient voice or document that I can find; [that I have proved] the clear right by the established law, by the admission of both parties, by a witness privy to the concerns of the Begum, and, still more, by her own acknowledgement, at different periods of time—that the right unquestionably was in the Nawab, and applicable to the purposes I have stated.

Futility of the argument from the place of deposit.

I shall detain your Lordships a very short time upon two other points, to establish the right of the Begum and to negative that of the Nawab, which have been referred to on the part of the prosecution. One is the place in which the late Nawab kept his money. And, I think, it will not be necessary for me to go into any length of argument to negative so extraordinary a claim as that is. To insist that, because a person preserves his property in the safest place, therefore he means to part with it! There is nothing in reason that seems to me to establish such a proposition. The Nawab did, as all persons in the East do, deposit and keep his treasures in a zanana, the apartment devoted to the women, because it has a degree of protection by the usages and prejudices of the country, and will therefore be protected from external embezzlement more than in any other part of the house in which the person lives;—from the custom of the country it will be more securely kept in the women's apartments.. But I am at a loss to conceive how the inaccessibility of a zanana to all strangers will prove anything more than that strangers have no right to what is there. And its accessibility to the husband proves nothing inimical to the right he had in them.

Security of the zanana.

Probable object of Suja-ud-Dowla's accumulations.

The Nawab was, for the last five or six years of his life, amassing, for the purpose of futurity, with great sedulity and with a miser's care, all the surplus of his revenues, without discharging even the necessary debts that were pressing upon him. Can you suppose that the Nawab was doing all this

for the mere purpose of giving away as fast as he hoarded; that he was hoarding up with his right hand and giving away with his left all the wealth he amassed, which he was laying up for an emergency? A natural account is given by all the witnesses upon the subject, that it was a deposit with the Begum, who acted in the capacity of his treasurer; that it was a deposit in that place for the reason I have stated. And your Lordships will observe that this was not the single instance in which the Begum acted in a public character, because we have proved, in page 1833, that the Begum kept the seals of the late Nawab, and in that respect acted in a public trust. She was also, it appears, considerably entrusted with the concerns of the late Wazir, as is stated by Mr. Bristow, in the letter I have referred to of the 3rd of January, 1776. It is, therefore, a very natural account of this business, that the Nawab should, under these circumstances, deposit the money in that place.

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The Begum receives them in the capacity of treasurer.

My Lords, we have also proved, in order still further to confirm these same circumstances, that tend very strongly to negative any probability—for that is all that we have to contend with here—that the Nawab would have had any disposition to part with it, that he was, in the year 1770, looking out for a place to fortify, for the purpose of keeping his treasure—his effects. We have shown that, in 1772, he began to fortify Fyzabad for the same purpose. And therefore it seems in the highest degree probable, that, having failed in these objects, he had recourse to the next safest mode of keeping and preserving this money. But, upon this subject, I am really contending with that upon which there has been no evidence adduced on the part of the prosecution; because, there being nothing in reason to establish such a right; there being nothing in the law of the country that gives money in a zanana *ipso facto* to the person that inhabits it, but on the contrary, the law, as far as it goes, negativing the probability of any such right—for, in page 1835, we have proved that, in the case of property kept in a house where a husband and wife both live, the gift, if made, would be invalid:—I only mean to say that there is nothing in the law that establishes the custom they contend for, but, as far as the law applies to the subject, there is every reason to believe that no such custom exists:—then, there being nothing in the law, and nothing in reason to establish such a custom, have they established it in point of fact?—have they called any witnesses to prove it?—Not one! We have asked the question

Suja-ud-Dowla's intention to fortify a place for their custody.

25 Apr. 1723.

The title derived from the zanana unsupported by law or custom.

of one or two witnesses who were in India, if they ever heard of any such custom prevailing in India. They have uniformly negatived its existence, and have stated that they never heard of it during their residence.

Evidence of Major Lumsden.

I will refer to Major Lumsden's evidence, page 1995, who was a long time in India, who has denied that he ever heard of any such custom prevailing in India. I will advert to one circumstance, that may in a degree [have] misled the prosecutor to suppose such a custom to exist—a passage in the debate I have already referred to, on the 3d of January, 1776, in the minutes of Colonel Monson and Mr. Francis, in which they state an expression which clearly applies, as all that happens respecting the dispute, as I have already observed, does apply—to goods and not to treasures. As applied to the goods, they state the right of women in that country, by the custom of it, to apply to what is in the zanana. And there your Lordships will find that, according to the expression, it clearly is so understood by the persons who use it. The passage is in page 448 of your Lordships' printed Evidence. It is in the minute of Colonel Monson. Upon this reference, after the treaty had been made, he says:—

Minutes of Col. Monson and Mr. Francis.

"I do not conceive, according to strict justice, these effects to be the Begum's property, as I understand women can claim a right only to what is within the zenana."

And then, in another passage, Mr. Francis says:—

"I incline to think"—with respect to the property of the effects in question—"with Colonel Monson, that women can claim a right only to what is within the zenana."

Now that is, in the fair context, and with reference to the subject matter that they were debating upon, by the very words of it confined to the goods; and, therefore, the authority of these two gentlemen could not fairly be urged to any custom, to anything beyond the goods and effects that they are speaking of. But I have the opinions of both these gentlemen, that no such right existed with respect to treasures, and [they], therefore, clearly could not have intended to establish any right in the Begum to treasures that were in the zanana upon that ground. The opinion of Colonel Monson, even in the very same minute, might have explained this, because there he clearly distinguishes; and, speaking of the money, he says:—

"She should be informed of the sums of money the late Nabob owed this Government by treaty, for services performed, and which were not liquidated at his death; that she received the advantages of the Ro-

hilla conquest, the plunder of those countries being deposited with her— as she succeeded, therefore, to all the Nabob's wealth, it is just she should discharge the demands due for those services by which she is the principal gainer." 25 APR. 1793.

Speaking after the treaty had been made, he says:—

"The Vizier's estates have not been divided according to the usual custom of the Mahomedan princes:"—

complaining that the estates had not been divided, and therefore clearly considering that the property was divisible according to that law. And, to obviate any possible doubt, I will only refer your Lordships to the opinions of these gentlemen, given in their letter to the court of Directors, page 441, where, in describing the circumstances of the case, they state—

Statement forwarded to the court of Directors

"The Baboo Begum retaining possession of all the Vizier's treasures to a considerable amount:"—

And they represent the case in that way to the court of Directors. And, afterwards, when Mr. Bristow sent his letter of the 3d of January, 1776, which I have referred to, stating it to be a deposit and to be the property of the Nawab, they state, that that so entirely accords with their sentiments that they desire the letter may be sent in a packet home to the court of Directors—which it accordingly was.

The whole of that letter and the passage I refer to have been given in evidence, I believe, in your Lordships' proceedings of the last day; and I will only observe, with respect to the opinion of Mr. Francis in particular, that he has in the most distinct manner, even at a much later period, given a clear and decided opinion on this subject, that, even after the treaty was made, that treaty did not preclude the Nawab from the right he had to this treasure; that the creditors had a right to the treasure of the Begum. He says, in page 1348 of the Prosecutors' evidence with respect to the donation money—

Opinion subsequently given by Mr. Francis.

"I think it should be demanded of the Begum, who got possession of all the late Vizier's personal property, and particularly, I believe, of the wealth and effects taken in the Rohilla country. This was always my opinion."—"It is also well known that the wealth of which he possessed himself by this means was conveyed to Fyzabad and deposited in the palace now occupied by the Begum. This in my opinion is the fund that should be answerable in the first instance for the donation to the army, [as their acceptance of the Nabob's promise in effect preserved the whole from plunder. No will or bequest of Suja Dowla can give the Begum a right to the succession to his personal property, without binding her at the same time to the acquittance of his debts. I think, therefore, that

25 Apr. 1793. our Resident should be instructed to state the case to the Begum, and demand the amount of the donation] from her."

Therefore it was clearly the opinion of Mr. Francis, at least, with respect to the creditors, that they were not, even by the treaty that had been made, excluded from the right to demand from the Begum the payment of those debts out of that fund.

And, in page 1350, he says:—

Protest of Mr. Francis.

"I beg it may be understood that I do not acquiesce in any part of the preceding minute [that respects the circumstances of the Begum and her son; though it would lead me too far to enter into a refutation of it at this time. On one fact I beg leave only to observe, that the agreement alluded to by Mr Barwell was for thirty lacks only; of which I am almost certain, from memory, that no more than two-thirds were paid. But, be this as it may, the donation money, as I understand it, is due not from the present Nabob, but from the person who inherited or got possession of the personal property of the late Vizier. Consequently, the demand, if made on the Begum, is not on account of the] present Nabob."

Therefore Mr. Francis's opinion, in the year 1779, clearly was, that the whole property left with the Begum was not her property to the exclusion of others who were intitled to this fund.

Testimony of Mr. Goring.

My Lords, there is only one other piece of evidence, I believe, remaining upon this part of the subject which it will be necessary for me to take notice of; and that is, a witness who has been called on the part of the prosecution—the testimony of Mr. Goring—which is in the printed Evidence, page 430. And, with respect to this evidence, I profess that it never occurred in all my experience to meet with such an extraordinary piece of testimony as this is—so perfectly inapplicable to the subject, and so full of mistakes from one end to the other. It is astonishing how any body, who had ever read a line of Indian history, could possibly have produced such testimony as this that appears upon your Lordships' Minutes.

Its irrelevancy and incorrectness.

Refers to the widow of Suraj-ud-Dowla.

My Lords, the evidence of Mr. Goring is produced for the purpose of proving the right of the widow of Suja-ud-Dowla; and, in order to prove the right of the widow of Suja-ud-Dowla, he is examined as to the right of the widow of Suraj-ud-Dowla, a person who died about twenty years before, who lived in another country, and who had nothing to do with him. The evidence given by Mr. Goring, too, is respecting a transaction that happened, by his own acknowledgment, twenty years before he came into the country; so that all the evidence that Mr. Goring gives must be

matter of what he has heard in the country respecting the facts that he gives. And, when your Lordships come to examine the testimony of Mr. Goring, it will appear to be all, even relative to that transaction, mere idle conjecture, and, unfortunately for him, a conjecture directly contrary to the fact, and to the known, clear, acknowledged, history of the country at the time. Mr. Goring is asked, in what year he went up to Moorshedabad. He answers, in the year 1775. How long he resided in India—he went out in the year 1760, and remained there till the year 1769; and again in the year 1774, and remained there till the year 1778. Then he is asked, whether he saw the widow of Suraj-ud-Dowla. Your Lordships will recollect that Suraj-ud-Dowla was the unfortunate predecessor of Mir Jaffier, the Nawab of Bengal, who was put to death soon after the battle of Plassey, which happened in the month of June, 1757. He is asked, what passed when he went up; whether he ever had an opportunity of seeing the widow of Suraj-ud-Dowla. He had.

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Is wholly conjectural.

Review of his examination.

"In what state did she appear to live?"—"In great splendour and magnificence."

The fact, therefore, that he knows is, that she lived in splendour and magnificence. Then comes the question—and here is a question put by the honourable Manager whom your Lordships have heard objecting to every question put on our part respecting opinion—

"From whence do you suppose she derived the means of living in that splendour and magnificence?"

This is the question—

"How do you suppose she derived the means of living in that splendour and magnificence?"—

And Mr. Goring has no scruple to form a conjecture upon that subject, and a very extraordinary one it is!—

"I supposed it was from money deposited in her palace by the orders of her late husband, the Nabob."*

So that Mr. Goring, knowing nothing but the fact of her living in splendour, supposes, not only how she was enabled to do it, but supposes exactly the place where it was kept. That is the point that is material. He is able by his sagacity to discover, not only how a person lived and where he

* "Minutes of the Evidence," &c., p. 430.

25 Apr. 1793. got the money, but likewise where the money was kept for him. A great many people find the way of living in great splendour and magnificence without any means at all; but how a person is to conjecture all this seems to me impossible. This conjecture is twenty years after the death of Suraj-ud-Dowla; who, your Lordships recollect, was stripped of his throne and life, and succeeded by his officer, Mir Jaffier, in the Nawabship of Bengal. He supposes that, twenty years after the death of Suraj-ud-Dowla, the widow was at that time living in spendour and magnificence on what she had derived from the husband twenty years before.

Then he is asked this extraordinary question:—

"Did you ever hear that Meer Jaffier claimed any part of the treasures left in the zenana after the battle of Plassey, and after the death of Surajah Dowlah—did you ever hear it?"—"I never did,"

Ignorance of the transactions in question betrayed by Mr. Goring.

says Mr. Goring. He never heard that Mir Jaffier claimed any part of the treasure of his predecessor! Surely Mr. Goring has never read the commonest history of the transactions. I am sure I need not call to your Lordships' recollection the history of that memorable event and the circumstances that followed it, which are circumstances of the greatest notoriety, perhaps, of any events in the history of India, as described by all the historians. Immediately after the battle of Plassey, Suraj-ud-Dowla made an ineffectual attempt, first, to send before him fifty elephants loaded with his treasure, his effects and his women, and to follow after with a casket of jewels. In the course of his flight, he was pursued and brought back—his elephants and all. He was then put to death upon the 20th of June, 1757; and afterwards Mir Jaffir, who, you are told, made no claims upon his treasures, dispossessed him of his throne and his life; and immediately, out of that treasure, paid down 1,000,000*l.* sterling to the Company, and made an apology to them that he could not pay the remainder of what he ought to have paid, which was 2,700,000*l.*, which he had agreed to pay to the British officers who assisted him upon that occasion; [saying] that he could not pay it, because he found the treasures not what he expected, but only sufficient to pay down 1,000,000*l.* sterling; and desiring time for the payment of the remainder by three instalments. And yet here does a gentleman come to give evidence upon this subject, and the question is put,—"Did you ever hear of such a thing?" and he states—"I never did!"

Proceedings of Mir Jaffier, after the death of Suraj-ud-Dowla.

Now, really, my Lords, it is astonishing to me how it is possible that [such ignorance could exist] upon this subject, which was not only notorious from the event that accompanied it, but notorious from the inquiry that took place in this country afterwards; for it is very well known that, out of that same treasure, a large donation was made to the British officers, which was the subject of inquiry afterwards in the British House of Commons. Nothing in the world was ever made so plain and notorious. And yet here is a question put upon the assumption that Mir Jaffier never even made any claim upon it; and the gentleman is come here to state upon his oath a conjecture upon this subject, negativing that fact which is matter of universal notoriety! This shows the danger of examining a witness upon a subject that he knew nothing of, and a witness who must have been perfectly unacquainted with the history of the country respecting which he gave his testimony. 25 APR. 1793.

Notoriety of the events.

But, my Lords, it does not even stand there, for there is another gross inaccuracy in this testimony. To state that this lady could have no other sources from whence she could live in that splendour! All the probabilities would have led him to look out for another source; but, if he had known the events that actually took place relative to that person concerning whom he gave his conjectures, he would have known, what we have proved—not that it was necessary to do it in order to negative such an idle conjecture as this, but to show another source for living in this splendid manner—that this lady was the daughter of a wealthy jagirdar, and had a jagir settled upon her by Aliverdy Khan, in 1750, upon her marriage with Suraj-ud-Dowla; that that jagir was held in trust for her afterwards, and appears publicly upon the records of India to be the means and the resources that she had.

Further inaccuracy in the evidence of Mr. Goring.

Real nature of the resources of the widow of Suraj-ud-Dowla.

This gentleman takes upon himself to give it another source. He attributes it to one which is contrary to all the fact; negativing that source which is the probable one, and which, if he had inquired of any one person at Moorshedabad upon the event, or had been any ways acquainted with any of the records at the India House, he would have known as the other and the real source from whence she derived this means of subsistence. Therefore it shows how hard it is to find any evidence to support this title, when such sort of conjectural evidence is produced to establish it.

My Lords, when all evidence fails, there is one resource

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Fanciful character of the Manager's oratory.

remains, which, I admit, the honourable Managers are never at a loss for—the resource of their great genius.

> "And, as imagination bodies forth
> The forms of things unknown, the poet's pen
> Turns them to shapes, and gives to airy nothing
> A local habitation and a name."

And, my Lords, I find that the observation upon this subject is closed by, in truth, casting away, with contempt, with disdain and indignation, all the ordinary ways of investigating a title. The honourable Manager well says, with that high genius that belongs to him, that to dispute with the Counsel about the original right to these treasures—to talk of a title to them by the Mohammedan law—all such trumpery ways of arguing upon a subject like that well become the Counsel in Westminster Hall, and may do perfectly for the narrow contracted rules that prevail there upon titles. Give me the pen :—

> "The poet's eye in a fine frenzy rolling !"

Here we have a title created at once by a dash of genius. What is it? It is the title of a saint to a relic upon an altar.* That is the title! Now, my Lords, I confess I am not able to follow him here. I have been grovelling below upon earth to find out all those titles that I am acquainted with; but I know too well what is the consequence that I have been told usually belongs to that person . . . . and I must leave the honourable gentleman, with his saint and the title, in the clouds. All I can look to is the title that exists upon earth. By deeds, by witnesses, and all the testimony, written and parol, upon that subject, I am not able to find the least shadow or tittle of evidence to support that assertion, that they were a gift by the late Suja-ud-Dowla to the Bow Begum; and I trust your Lordships will be satisfied, notwithstanding what has been said upon this subject, that this title of a saint which is supposed to have been there "placed by piety and guarded by holy superstition, and not to be snatched but by sacrilege," is, in other plain words, a right placed there by injustice, guarded by violence, and that ought to be taken away by the hand of power if justice could not effect it.

Recapitulation.

I trust, therefore, that I have established by all the evidence—I fear at too much length, but I have done it because these are the great premises that are made the

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* See Mr. Sheridan's Speech; vol. i. p. 494.

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basis of the whole charge that apply to the two subjects of the jagirs and the treasures—I trust I have satisfied your Lordships upon both, that the right set up, and upon which they have contended the guilt of Mr. Hastings to have been founded, is founded in their own mistake, in their misapprehension of the subject, from beginning to end; that the Nawab had a clear right to resume the jagirs, and a clear right to every rupee, in the way I have stated.

The only proposition I insist upon as having been established, upon this view of the subject, is this:—that to have taken from the Begum the whole of that money, at any period of time, and given it up to the Nawab for the discharge of his debts, or in the way in which he chose to apply it, would, if there had been no treaty upon the subject, have been an act, not of cruelty and injustice, violence and tyranny, but a clear act of justice. It was to prevent the Begum being, what the Nawab is stated to be, an instrument of perfidy and outrage—to prevent her being an instrument of perfidy and outrage to her own son. That is the proposition I wish your Lordships to carry away upon this subject; meaning next to take up the other part of the subject—what right was derived under the treaty, and whether the public and the British Government, under the conduct of Mr. Hastings, were or [were] not justified, by the subsequent conduct of the Begum, in considering every right derived under that treaty to have been forfeited, by her conduct in 1781. That will be the subject of the next head I propose to discuss; having closed all I meant to submit to your Lordships to establish the first proposition—of the right, antecedent to the treaty, to both these subjects of property.

The question of right derived under the treaty reserved for the next subject of discussion.

CONTINUATION OF THE SPEECH OF THOMAS PLUMER, ESQ., COUNSEL FOR MR. HASTINGS, IN SUMMING UP THE EVIDENCE FOR THE DEFENCE ON THE SECOND ARTICLE OF THE CHARGE, RELATING TO THE BEGUMS OF OUDE; 30 APRIL, 1793.

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MY LORDS, the Charge which I am now about to consider presents the subject of the present Article before your Lordships in a new and different point of view. Hitherto I have endeavoured to consider the propriety of the two measures that are the principal subjects of the Article, as they would have stood had no treaty been entered into upon the subject of them, and as they stood, principally considered, between the Begums and the Nawab, regulated by the municipal law and usages of the country in which they took place. I am now to consider the subject as between the Begums and the British nation;—the measures as being the subject of a solemn treaty regulated by the law of nations, applicable to a subject of that description.

Measures of Mr. Hastings in connection with treaties.

My Lords, I have purposely kept these subjects distinct, in the hope that, in that mode, they might be most accurately and clearly discussed. If I have had the good fortune to satisfy your Lordships respecting the general justice and policy of these measures, had no treaty upon the subject been made at all, I hope that I shall be able, in the consideration of the present subject, to show that no objections whatever to the propriety, the justice or the policy, of these measures arise from the consideration of this part of the subject; but that, on the contrary, very strong additional arguments are to be derived in their favour. I hope to be able to satisfy your Lordships that, in the consideration of these subjects, there is nothing exceptionable or of questionable policy, excepting only that which is made matter of commendation, namely, the original making of the treaty; and that the only persons who have been guilty of a violation of this treaty are those persons on behalf of whom the present Charge is made.

Treaties with the Bow Begum in 1775.

My Lords, the first subject of discussion is the original making of the treaties; one of them with the younger

Begum, called the Bow Begum, in the year 1775, the other with the elder Begum, in the year 1778. I shall endeavour to discuss these subjects distinctly, because they fall under very different considerations. With respect to the treaty made by the British Nation with the Nawab and the Begums, in the year 1775, it has been said that it was a treaty of peculiar weight and solemnity; that the violation of it was attended with circumstances of peculiar aggravation, from the natural as well as civil relation in which the parties stood towards each other—from the peculiar generosity of the Begum towards her son—the affectionate tenderness which she had displayed throughout the whole of this transaction. The different points of view in which the same transaction may be put are singular. But, examining the evidence before your Lordships, I confess I cannot help considering the subject in directly an opposite point of view—that this solemn treaty, the boasted act of Mr. Bristow and the majority, in the year 1775, at that golden era of the British Government in India, was, at least on the part of the Begum, an act of gross extortion, and undue advantage taken of the necessities of her own son—those necessities created in a great measure by her own scandalous fraud and injustice—and which treaty was acceded to on the part of Mr. Bristow and the Government of that day, not, as has been represented, for the purpose of protecting the mother against the oppressions of her son, but as an act of necessity to extricate the Nawab from the pressure of the difficulties that surrounded him, and to procure a temporary supply to save his throne and his life, both of which were endangered by the conduct of this very mother towards him.

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With the elder Begum in 1778.

Peculiar sanctity attributed to the former.

Extortionate nature of the treaty.

My Lords, for the purpose of enabling your Lordships to form a correct judgment respecting this treaty—the treaty of October, 1775—we have laid before your Lordships some written evidence, describing the situation of the Nawab at the period when the treaty was executed. I recollect, some observations were made respecting the irrelevancy of that useless load of evidence. I find, in the account given of this transaction, that is the principal key to it which has been alleged by the person who originally entered into it—Mr. Bristow—as the apology for his conduct in it, namely, the necessity and the distress of the Nawab. That has been in a great measure questioned on the part of the prosecution; and it is stated, I believe, even in the Articles before your

Conduct of Mr. Bristow regulated by the necessities of the Nawab.

30 Apr. 1793. Lordships, that, at the time, it was obtained under the pretence of distress. If ever there was distress really existing in the case of a sovereign, it was in the instance of the Nawab at that time. For the purpose of satisfying your Lordships that it was so, we have laid before you the letter of Mr. Bristow, giving a narrative of the state of affairs at that period. He who was the person that made this treaty states his reasons for having acceded to it.

Financial difficulties of the Nawab on his accession.

The Nawab came to the possession of his dominions upon the 26th of January, 1775. He had at that time, as it is represented by his minister, Murteza Khan—which your Lordships find in page 1859—succeeded to the musnud, with a large debt to the Company, some months' arrears due to his troops, and great expenses to defray on his taking charge of the government; and he had hardly 15,000 rupees, that is, 1,500*l.*, in his treasury wherewith to satisfy all those demands. Many persons upon both his civil and military establishments had, at the period when this representation was made to Mr. Bristow—the 5th of September, 1775—three, four, and five months of their pay in arrear.

Liabilities of the Nawab.

Your Lordships will recollect the amount of the debt then pressing upon the Nawab, whose income did not exceed three krors, that is, about 3,000,000*l.* sterling—the nominal amount, but the real produce far short of it. He came a young man to the possession of his dominions, with competitors, as is stated by General Clavering, disputing his right to them, loaded with a debt from his father of above 2,000,000*l.* sterling.

Mutinous spirit in his army.

My Lords, in that country there is no possibility of funding a debt. He was to defray it out of his growing income. He had a large undisciplined army, consisting of 100,000 men, as your Lordships will recollect, largely in arrears, mutinous for their pay within seventeen days of his father's death; an account of which Major Gilpin has represented, in page 884 of your Lordships' Minutes. Being asked whether Suja-ud-Dowla's army were considerably in arrear at the time of his death,—

"I believe it was so much so"—says he—"that, while he was lying a corpse, before the funeral, I, who was then a subaltern officer in the first battalion of sepoys—a lieutenant—was ordered to be ready with four companies, at a moment's warning, to quiet any riot or tumult there might be in the city of Fyzabad in consequence of his death."

My Lords, I find a history—which I will not go through, but your Lordships will see much of it upon the Minutes—

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I find an account of what was the result of the pressing demand of that one class of creditors—his troops—upon him, from the period of his first ascending the musnud down to the time of making this treaty. I will only state one passage, wherein Mr. Bristow, giving an account of what had been the state of the troops in the preceding year, says:—

"Last year we were cantoned here with 50,000 troops. Almost daily disturbances for pay, or disputes between the different castes of the army, happened; [and I recollect more than twenty instances of the whole army being drawn out to settle the matter by combat, to the great terror of the inhabitants]. With difficulty the Vizier was able to settle their disputes; in doing of which he submitted to many indignities, and even personal danger."*

It was with this army that he was to keep his dominions in order!

Disordered state of his dominions.

Your Lordships will find that every one of his dependencies at that time was endeavouring to break from under him. In Rohilcund, in the north, the person who had the care of his country in that district, Bushir Khan, early showed symptoms of a wish to set up for himself in that part of the country, and, in a month preceding this treaty, was actually driven out and took refuge with Nujif Khan—a rebel chief, who was at that time affording an asylum to all the rebels of the Nawab's country. In [the Duab] the two brothers [Amru Gyr and Anup Gyr] were acting exactly in the same character. In Corah and Allahabad, a person of the name of Mahbud was in two years guilty of repeated acts of rebellion against the Nawab. Baraitch and Goruckpore have been proved, on the part of the prosecution, to have been in a state of continued disorder from the beginning, and hardly to have formed a part of his country. Your Lordships recollect what was the state of Benares at that time, the country belonging to the Nawab. In his own country, at Lucknow, parties [were] forming against him, dissatisfied with his having removed the persons appointed under his father and having appointed others in their stead. They were dissatisfied at the instance of the Begum, and formed a considerable party on her behalf. It is stated by Mr. Bristow, that the absence of the Company's brigade was only waited for, for the persons there to form conspiracies against him. He says,—

Dissatisfaction at Lucknow fomented by the Begum.

* Letter of Mr. Bristow to the Governor General and Council; 13th of June, 1776.—Printed in the "Minutes of the Evidence," p. 1882.

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"With his numerous army he might really have been now in this state; [but the men of consequence and abilities are all disgusted, and only want the absence of the brigade to enter into parties against his government], all openly declaring their dissatisfaction."*

My Lords, I find, throughout all those papers, the distracted state of the Nawab's affairs represented in all the letters of Mr. Bristow; but I will particularly advert to the situation more nearly approaching the time this treaty was entered into, and the circumstances that immediately gave rise to it. Your Lordships remember that, a few months before, in the same year, in May, 1775, the new treaty had been entered into with the Nawab, conducted also by Mr. Bristow, and proceeding upon principles reprobated by Mr. Hastings. For, at the period of the Nawab's accession, when, to keep his troops in order, he was under the necessity of having recourse to the protection of the brigade of British troops, Mr. Hastings thought it was neither consistent with justice nor with policy to declare, as the majority determined they would, upon the 13th of February, in the year 1775, that all the treaties made with his father—some of which were expressed to be "with him and his heirs"—expired at his death; that if he wished to purchase a continuance of the Company's protection, he must purchase it by a new treaty; and, as a preliminary to a new treaty, he must, in the first place, discharge all the obligations of his father, some of which were created by those treaties, which were all expired, for the purpose of his protection.

Treaty with the Nawab, 1775.

Its injustice denounced by Mr. Hastings.

Payment of his father's debts to the Company a condition of treating with the Nawab.

I find it distinctly stated to the Nawab, that payment of the debts of his father must be the preliminary to a new treaty. Your Lordships will find this in the printed Evidence, page 1844:—

"Having these accounts before you, you will be fully enabled to settle entirely this business with the Nabob; and we direct that you give him to understand, in the most amiable and respectful manner, that, before you can listen to any other proposals from him, it is absolutely necessary that all claims on him in virtue of his late father's engagements with the Company be adjusted, and payment made, or security given, for the sums which shall appear due. We will only add, that, to whatever sums the Nabob's payments have run, on no account give a general discharge or receipt in full without our express authority, but only a simple receipt upon account. These matters being thus settled, you will then be at liberty to listen to any overtures for a new treaty which the Nabob may choose to make. And, in this case, you will take care to intimate to

* Letter to the Governor General and Council; March, 1775.—Printed in the "Minutes of the Evidence," p. 1887.

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him, that, although the Company regard him as an ally and have not scrupled to acknowledge his right to his father's succession, yet the specific conditions of the several treaties made between the Company and his father being merely temporary and personal, they, of course, expired with him."

Consequent applications of the Nawab for the funds in the hands of the Begum.

Some of those very treaties are expressly declared to be "with him and his heirs." In consequence of this declaration —that he was under the necessity of paying his father's debts; but was not intitled to the benefit of those engagements which gave him a continuance of the same protection from the Company—he was under the necessity of making repeated applications for the recovery of that fund by which all those demands, created by his father, or belonging to his father and the state, were to be liquidated.

Mutinous conduct of his troops.

I find that, particularly, the pressure made on the Nawab immediately preceding the treaty that I am now considering was such, that it is declared that a body of troops marched from the Duab, contrary to orders, to exact from him the payment of their arrears; threatening to seize his person and endangering his life. That, your Lordships will find, is distinctly stated in page 1862.

"I propose to-morrow to set off for Lucknow"—Mr. Bristow says—"and then expect to see some measures adopted for regulating the Nabob's affairs; for, since I last wrote to the honourable Board, the five battalions under Bussunt, who were with the Gossaynes, are arrived at Lucknow, having left their station contrary to the positive orders both of the Nabob and Bussunt. The plea is four months' arrears of pay. When the Nabob first heard the news of their having marched, he sent them a lack of rupees, in part. They refused to receive it, insisted upon the whole, and came to Lucknow with a declared intention of obtaining it by any means. I suspect they are connected with the other battalions on the spot, but they will prove to the honourable Board that my journey to this place was not unnecessary."

Mr. Bristow was then writing from Fyzabad, and actually engaged in the negotiation of the present treaty.

In the following page it is stated:—

Letters of Mr. Bristow on the subject of the mutiny.

The enclosed paper is a copy of a letter I have just received from Mr. Bristow, with my reply to it. I hope it will meet with your approbation. The brigade will be in readiness to march this evening, should the intelligence I expect from Lucknow render such a measure necessary. If the expected mutiny is only a plan of his, the Nabob's, troops, to extort their arrears, I fancy they will proceed no further than seizing his person, till they can obtain satisfaction on that point, and that his life will be in no danger. But, if they are led by any of his family, it is probable they may proceed to extremity and cut him off, and all assistance from the brigade will come too late. At any rate, not a minute shall be lost."

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And, in another letter, in the same page, Mr. Bristow states:—

"In consequence of the inquiries I have made into the designs of the Nabob's troops, I understand for certain that they intend to make a demand of their arrears of pay, and, if he does not discharge the whole amount, seize his person. I have even heard this refractory spirit has proceeded to such lengths that they threaten to make attempts on his life. I think it my duty to inform you of these circumstances."

And then he states:—

Fifteen lacs obtained from the Begum.

"The minister is now at Fyzabad"—the place where the treaty was negotiated—"from whence I hourly expect his arrival, when the sepoys will commence their operations. I had likewise accompanied him for the purpose of procuring money from the Begum; which we got, so far as fifteen lacks of rupees, for the Nabob,"—that is under the treaty—"but this is so small a sum, considering his monthly expenses, that it is impossible for it to serve for any other than a temporary aid. It may quiet them a few days, perhaps not at all; at any rate a disturbance will certainly be the consequence; and, for my part, as we shall be circumstanced, without money or resources, I cannot think the Nabob in safety."

My Lords, in page 1865, he states:—

Insufficiency of revenues for the support of the Nawab's establishment.

"On my return to Lucknow I found the Nabob's army in greater confusion than ever. The five battalions who had been with the Gossaynes had left their station, contrary to the repeated and positive orders both of the Nabob and Bussunt, their commanding officer. They have acted thus on pretence of not receiving their arrears of pay. They even carried this refractory spirit so far as to lay plans to seize the Nabob's person, if they had not payment made them. The whole sepoy corps have also entered into engagements never to suffer severity to be used to any of them, and, if the Nabob should dismiss them his service, they have agreed not to part with their arms. In regard to the matchlock men, the sepoys declare they are very ready to support the Nabob against any combinations or designs they may entertain detrimental to his authority. What with the money procured from the Begum and some small sums collected from the country, the Nabob has managed to satisfy the sepoys for the present. But, when these sums are once expended, I am convinced the revenues from the country during the ensuing season will not suffice for his Excellency's expenses upon the present establishment. Knowing this I have recommended it to Murteza Khan to advise the Nabob to dismiss his mutinous and useless troops, and only keep such as are obedient. He promised me he would do it. For my part, I think the only mode he can effect it by will be to join the brigade, and make a severe example of the ringleaders. But on this head I am waiting his determination, which I expect immediately. Unless the Nabob will consent to some spirited measures, I am really apprehensive of his life; for, as a respect for his person is lost, I think it probable the rabble by whom he is surrounded will not stop at anything."

My Lords, there are other passages to the same effect, but I will not fatigue your Lordships with reading them. They are all upon the Minutes. I have only stated these

for the purpose of showing that the view given of the real situation of the Nawab, at the time he made this treaty, was not one of pretended distress, but of real, great, pecuniary, danger; and which, in fact, accounts for the very unjust and impolitic treaty which he was under the necessity of submitting to. 30 APR. 1793.

My Lords, in consequence of these difficulties the Nawab very early applied to the Begum, whom your Lordships will recollect was the treasurer of his father, and who had the custody at that time of the Nawab's treasures, in the double character—as an individual and as representing the state. He applied for the delivery of the sum of more than 2,000,000*l.* sterling, which was then in possession of the Begum. I find an account given of his applications, beginning in the month of March, 1775, and continued down to the time of making the treaty. During the whole of that interval, of about eight or nine months, all that the Nawab was able to recover of his undoubted right amounted to no more than twenty-six lacs—little more than an eighth of what was his due; and for that he was under the necessity of giving a written security—nay, even of giving assignments of land, grants of jagirs, to the amount of four lacs a year. As it was afterwards acknowledged, in the treaty that I am about to state, that it was the Nawab's patrimony, undoubtedly that security was an unjust exaction, as admitted by the Begum herself.

The Nawab's application to the Begum for the treasure.

He obtains twenty-six lacs.

In the month of September, when his difficulties were still more pressing upon him, the Nawab went in person to Fyzabad, to solicit the remainder of what was his undoubted right. I will now read to your Lordships the account given of that interview with his mother; and your Lordships will then see, having learned what was the actual situation of the Nawab, whether the conduct of the Begum towards him upon this occasion was such as has been described on the part of the prosecution. The Begum at that period was, herself, in possession of an income of 70,000*l.* a year. By her own account to Mr. Bristow, she had jagirs to that amount, and her expenses did not amount to more than 15,000*l.* a year; leaving her, therefore, a surplus of 55,000*l.* a year. This is stated. That she has jagirs even to her rank in every respect is evident from her own letter. [She states that she is in the receipt of] 12,000 rupees a month, which, your Lordships will find, amount to the sum I

He applies in person to the Begum.

Computation of her resources.

30 Apr. 1793. have stated; and her income is known to be seven lacs a year.

My Lords, with this income arising from her landed possessions, and having actually in her custody a sum to the amount of what I have stated, in the month of September, the Nawab went to solicit relief to his distresses. The account given of that your Lordships will find in page 1891 of the printed Evidence. The Nawab is there represented by Mr. Bristow to have communicated to him his intention of proceeding to Fyzabad, for the purpose of obtaining the money that belonged to him. He had expressed a jealousy of the interference of Mr. Bristow and the English Company between him and his mother, the Begum. He went unaccompanied by Mr. Bristow, having upon former occasions gone there accompanied by his uncle and by his minister, and by other persons, to solicit the recovery of his patrimony. He went there himself, in hopes that the effect of a personal application from himself, and a representation made of the difficulties under which he laboured, would have some effect with his own mother.

In page 1892, Mr. Bristow represents what was the result. He says:—

Failure of the Nawab's application to the Begum.

"Since my last address of the 9th instant, the Nabob is returned from Fyzabad, without having obtained any money from the Begum. I understand she received him with great warmth; but she had, before his arrival, declared her intentions of not giving him money upon any account, for she pretended not to have any;—a pretence directly false, as appeared afterwards most clearly. His Excellency behaved to her with the greatest respect; told her he studied her satisfaction prior to every other consideration; and, knowing her resolution, thought it proper to defer the demanding of money from her until another opportunity; hoping by this conduct to soothe her Excellency. Without he receives some assistance from her, he must be put to great inconvenience for the means of supplying the exigencies of his government."

He requests the interposition of Mr. Bristow.

Upon his return, having found his own personal applications to his mother ineffectual, he requested the interposition of Mr. Bristow, which he had just before expressed his jealousy of. And Mr. Bristow, who had expressly declared to the Board, in his letter of the 9th of September, 1775, [that] he had intimated to the Nawab he should not interfere upon the subject—[that] he could not with propriety interpose in domestic matters without special orders; and had at the same time assured the Nawab it was not his intention to interfere, unless the honourable Board should hereafter direct him; this Mr. Bristow, your Lordships will find, with-

out any directions whatever from the Board, but in consequence of the pressing importunity of the Nawab to interpose his application for the purposes I have stated, consented to undertake a journey to Fyzabad, to the Begums. 30 Apr. 1793.

I beg, upon this part of the case, your Lordships will observe, that the act of this treaty was at the time entirely the unauthorised act of Mr. Bristow himself; and not only unauthorised, but after a declaration made to him such as I have stated to your Lordships—after another declaration made, which your Lordships will find in page 1892, of the impropriety of similar guarantees, or of treaties pledging the Company's faith upon subjects of this sort. Speaking of an application that had been made to him respecting Ellich Khan, he says:— Mr. Bristow's interference unauthorised by the Board.

"Ellich Khan is the only instance of my affording an individual the Company's protection. [He repeatedly wrote to me that he could not trust either Murtezah Khan or the Nabob, yet he would return if I should write him to do it. He has now refused to come, without having previously thereto a treaty executed by me in the name of the Company. I thought this request an insult; for, whatever the Nabob might have done in concluding a treaty with a subject, it was no precedent for other states to follow. It was a sign of the weakness of his government; and a similar act from the Company appeared to me inconsistent with the character they support] in Indostan."

The Board, in answer to Mr. Bristow's letter, write him an express prohibition from interfering upon the subject at all. The Board write to Mr. Bristow on the 25th of September,—

"We desire you will assure the Nabob that we do not mean to interfere in the least in any of his domestic concerns."

The treaty, your Lordships will recollect, is upon the 15th of October following. Notwithstanding this, Mr. Bristow represents, in his letters of the 11th and 16th of October, that he had gone to Fyzabad and had made the treaty now under consideration. His account of this subject your Lordships will find in pages 1894 and 1898. He there represents his application to the Begum. He says:— He becomes party to a treaty with the Begum.

"The Nabob, immediately on his return from Fyzabad, stated his distresses to me, and begged of me to help him, and endeavour to persuade the Begum to assist him. I wished to have declined complying with his Excellency's request, especially after he had indirectly objected to my having any correspondence with her; but being sensible of his necessities I consented, upon the condition of his not expecting of me to use violent measures. I accordingly went to Fyzabad, and explained particularly in writing to the Begum how impossible it was for the Nabob to conduct his government without her assistance."

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His negotiations with the Begum.

He then states, in a passage I read on a former day, after stating the right the Nawab had to these treasures :—

"After much persuasion, the Begum agreed to pay the Nabob twelve lacks; and this she declared was wholly to oblige me, and upon the condition of the Company's being [pledged] to secure her the possession of her jaghires for life, and that the Nabob should not interfere with her upon any account."

Mr. Bristow says :—

"I excused myself because of the insignificancy of the sum; but offered to comply with her terms in case of her granting fifty lacks. This I had authority for from the Nabob, who, on desiring me to undertake the negotiation, repeatedly and earnestly expressed his desire not to use any violence; and, in order to prove it, he said he would submit to the Company's being mediators of all differences between him and the Begum; but it was hard, when reduced to such distress, that his mother should uselessly keep up immense treasures."

Mr. Bristow then states that he explained to the Nawab what had passed; that he interfered merely to prevent any differences or doubts subsisting between them; that he was desired to write to the Begum very fully upon the subject, which he did, stating to her the reasons and occasion of his application. Now I will read to your Lordships what is the Begum's answer; and you will judge whether it is possible to conceive an instance of a mother's acting with more unnatural and more unfeeling cruelty to her son, in the situation in which I have proved him to be at this period, namely, in the month of October, 1775, and she in the situation that I have stated—having all the means of assisting him; he being at that time exposed to the peril of the loss of his throne and of his life.

Answer of the Begum to the application on behalf of the Nawab.

In the answer of the Begum to the application made on behalf of the Nawab, after his situation had been explained in writing, she complains much of the administration of affairs; that what she would do should be for the sake of the English; and, as for the Nawab, she would not advance him a single rupee upon his word, but would sooner throw her jewels and money into the river. This is the person, my Lords, who is held up as the paragon of mothers !—as a tender, affectionate, parent, whose peculiar attention to her son is to aggravate the subsequent violation of the treaty made with her upon this subject! When the Nawab had solicited, like a poor needy mendicant beggar at her door, for a part of the property which actually belonged to him—when she had treasures in her possession that were useless to her—when she possessed by his and his father's bounty an

affluent income, exceeding largely all her possible wants—yet does she declare to her son, her only son, supplicating her in person upon the subject, that she would sooner throw her money and her jewels—her money! my Lords? it was the money of the Nawab—the money of her son!—she would sooner render it useless to everybody and totally destroy it, than afford any part of it to the relief of her own son, to save his throne and his life! This is the conduct which is represented in these terms on the part of the prosecution. This is the light in which they have represented the subject. This is the light in which the evidence presents it before your Lordships, in page 1895.

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Her injustice and inhumanity.

My Lords, this was not all. Your Lordships will find that, even after this, after she had been induced at length to part with very little more than one fourth—as she did under the treaty—of what belonged to the Nawab, she seemed to repent of having so far submitted to the just claims of the Nawab, and to express a reluctance at having afforded that small pittance, which, your Lordships have heard, was the means of protecting him against the mutiny of his troops, and which could only answer for a short period of time. Even after that does this affectionate mother declare to Mr. Bristow a wish to retract it, and desires to have the money back again. Says she—"Don't you interfere between us; and then let the Nawab and Murteza Khan get the money in any manner they can: they will then see the difference." That was the conduct of this mother, after she had given up only one fourth of what belonged to her son. The passage to which I particularly allude was given in evidence on the part of the prosecution, and is in the printed Evidence, page 444.

She attempts to recover the sum advanced to the Nawab.

In the next page but one to the treaty, pages 444, 445, there is a letter given in evidence from the Begum to Mr. Bristow, after the treaty, in which she says:—

Her letter to Mr. Bristow.

"You are a party in this affair, and took from me the sum of fifty-six lacks of rupees. If you will cause the fifty-six lacks to be restored to me, then the coulnama will not be binding; and do not you then take any part in the affair; and then let Azoph ul Dowla and Murteza Khan, in whatever manner they are able, take sums of money from me. They will then see the consequence."

Under these circumstances was this solemn treaty made. The treaty itself is in the printed Evidence, page 442. And your Lordships will find, upon the very face of it, a most palpable proof of its injustice. Instead of being, as it is

30 APR. 1793. represented, purchased for a valuable consideration, and that on that account the Begum was intitled to peculiar attention and favour under it, your Lordships will find it to be a palpable fraud. It is fraudulent upon the face of it, and one which, I am persuaded, had it been a case of private contract between subject and subject, could not for a moment have stood in any court of justice, either legal or equitable; it being without any consideration extorted by a mother from a son, in the situation and under the distress which I have described.

Extortionate treaty with her son.

So far from its being what is stated—the allowance and confirmation of an antecedent right—the treaty, upon the face of it, admits that what had been delivered up to the Nawab at that time constituted a part of his own patrimony. In the first line of the treaty, it says:—

The Nawab's right to the treasure admitted by the terms of the treaty.

> "I have now taken from my mother thirty lacks of rupees on account of the present, and twenty-six on account of former debts,"—and so on—"from the patrimony of my father, and have no further claims on her."

Your Lordships will find, certainly, that it contains, on the part of the Nawab, a relinquishment of any further claim upon her; but was that in consequence of a conviction that he had no further claim on her? Did Mr. Bristow think so? Mr. Bristow, in describing this very negotiation, states that, at the time when he got from her, on the part of the Nawab, twenty-six lacs, she had then actually in her possession one kror and seventy lacs; leaving in her possession, even after the treaty was made, and supposing the whole fifty-six lacs to be delivered up, very nearly a million and a half sterling belonging to the Nawab. He is then made likewise to renounce all further demands upon her, and to engage to protect her in the enjoyment of her jagirs for life—to engage that she should have no trouble on account of them:—

He relinquishes his claim, on receipt of fifty-six lacs.

Covenant to secure her in the possession of her jagirs.

> "She shall collect whatever appears due from the said jaghires by by her own people: I will not obstruct it."

He is also made to engage, that, when his mother goes on her pilgrimage, she is at liberty to leave the jagirs under the charge of whomsoever she pleases. And then it provides certain other circumstances respecting the pilgrimage which she was anxious to make at that time. That is in the printed Evidence, page 1828.

Your Lordships will find that was a measure which the

Nawab afterwards complained of as harsh and cruel upon him; casting a degree of reflection and disgrace upon his government, if the Begum should quit it, and carry out of it the wealth she had at that time in her possession. He states that his mother was to be at liberty in respect to the jagirs; that he would not give any trouble to Jewar Ali Khan and Behar Ali Khan, or any other person named there, or to the tahvildars. Your Lordships will find the treaty throughout to be worded for the purpose of restraining the Nawab in the exercise of an antecedent right, of preventing his recovering any more of the money that he was intitled to, and of preventing him at any period of time making that regulation which, I have stated, he would otherwise have been clearly intitled to make, namely, to take from her the possession of her jagirs. 30 Apr. 1793.

Main purpose of the treaty.

He says also—and here your Lordships will find a very singular part of this solemn treaty—that the Nawab is not only made, by this treaty, in consideration of one fourth of what was due to him, to give up three fourths, but this affectionate mother insisted upon his binding himself by a solemn treaty never to apply to her even for a loan:—

"Further, I will not in future demand any loan from my mother."

The Nawab is restricted from applying to the Begum for a loan.

This was at a period when, as it is described by Mr. Bristow, in page 1858 of the printed Evidence,—

"The public credit is by this means ruined, and I do not suppose there is one merchant in the Nabob's dominions who would, of his own free will, make him a loan."

He is, by this treaty, precluded, in the midst of all his distresses, not only from the recovery of three fourths of his own and the public money, but he is restricted, in that state when no merchant would advance him a loan, from having recourse to solicit a loan even from his own mother, out of the immense treasure which she had, and of which she was making no use.

The treaty adduced in bar of the measure pursued by Mr. Hastings.

This was the solemn treaty upon the subject of these two species of property—the jagirs and the treasures—which is now set up as a bar to the measure that I have stated. My Lords, Mr. Bristow was conscious that a measure of this sort, done by himself without any authority, after being expressly told not to interfere in the business, required some apology. He has stated what actuated his mind to engage in this business—that it was an act purely of necessity; that, without it, the Nawab's affairs would have been driven to ruin and destruction; that it was to get a small relief from

30 Apr. 1793. a person who would not deliver it up upon any other terms, and that it was necessity which had made him submit to it.

In the printed Evidence, page 1898, Mr. Bristow says:—

Mr. Bristow's explanation to the Board.

"I now submit my conduct in this negotiation to the consideration of the honourable Board. It is necessity alone which has obliged me to act the part I have done; for, without the Company as guarantees of the treaty, the Begum would not have given a single cowry. The Nabob wholly of himself asked me to interfere, contrary to my inclination; and I therefore hope the honourable Board will approve of my conduct, especially as it was the only means of realising a considerable sum at this juncture."

Ratification of the guarantee by the Board.

Upon that ground Mr. Bristow made the treaty. Upon that ground, your Lordships will find, and that ground alone, the Board, after it was made—made without their previous authority—after the money had been given in consequence of it, after the money had been distributed amongst the troops that were surrounding the Nawab and threatening his life, after they had heard of the business, did not decline to ratify it; but, at the very time they do it, they state their reason for consenting to that ratification, both in their letter to the Nawab and to the court of Directors:—

"We think that the circumstances of the Nabob's affairs, and the unfavourable disposition which his mother, the Begum, showed towards him, made it necessary for you to comply with his request for affording your assistance to persuade her to supply him with a sum of money, and we, therefore, approve and confirm your guarantee of the treaty which has been entered into between them."

Account of the transaction forwarded to the Directors.

This is in the printed Evidence, page 441. And, in the letter to the court of Directors, after having stated an account of this business—that the Begum had got possession of all the late Wazir's treasure, and that application was made to Mr. Bristow to use his influence for the purpose of mediation, they say:—

"They prevailed on her to give the Nabob thirty lacks in ready money, and a release for a sum of twenty-six lacks which she had formerly lent him; but her conditions were positive that he should enter into a treaty with her, under the ratification of the Company, never to molest her more with demands for money, as she would not grant the present relief on any other terms. The Nabob signed the treaty, and Mr. Bristow ratified it; which ratification, as the urgency of the case rendered necessary, we have approved."

Recapitulation.

I hope therefore that I have succeeded in showing that, antecedent to the treaty, all that fund respecting which the treaty was made—the whole of it—belonged entirely to the Nawab; that, therefore, the relinquishment of three fourths, in consideration of one fourth being delivered up, was no

valuable consideration at all, but was a treaty, upon the face of it, fraudulent and void, and both submitted to on the part of Mr. Bristow originally, and afterwards confirmed by the Board, upon the ground of the necessity of the case; and that the situation in which the Begum was placed, and her own fraud in not voluntarily giving up that which she ought, without any application, to have delivered to the right owner, on account of the pressure of his affairs, accounts for this bargain being made, which is a solemn piece of injustice on the part of the Begum, exacting from the Nawab that which he was driven to submit to in consequence of her own fraud and injustice towards him. This treaty was made on the 15th of October, 1775. 30 Apr. 1798

Question of breach of the treaty of 1775.

Now, my Lords, the next consideration will be, as applied to this subject, the breach of this solemn treaty. And your Lordships will find that, throughout, from the time of making it, the British nation, who had been induced to pledge the faith of the public to such an instrument as I have stated, uniformly, through the medium of their representative Governors abroad, with undeviating fidelity, observed this treaty, hard, unjust and wicked, as it was on the part of the Begum, down to the hour when she was guilty of that which is imputed to the British nation—when she was guilty of a base and flagitious violation of the treaty.

Uniform observance of the treaty by the British.

I will show your Lordships that the British nation and Government abroad uniformly observed the treaty with the strictest fidelity; that they did in various instances interpose, purely upon the ground of the treaty, to afford uniformly the assistance of the British nation, pledged as it was by this instrument, to the Begums, for the protection of both these species of property; that the Begum, on her part, from the very beginning endeavoured, first, by mean artifices, to evade the performance of the treaty, and, afterwards, was guilty of a flagrant, open, palpable, violation of the treaty, and the implied condition upon which that treaty and every treaty of a similar description must be considered to have been made, namely, this—that the property and rights which one state guarantees to another state are not to be made use of against the state that affords that protection. That I conceive to be the implied condition annexed to a treaty. Call it, if you please, a solemn treaty. Let her be erected into an independent state—a contracting party with the British nation in a solemn treaty. If she is so for the purposes of all the rights of an independent power, she must

Breach of faith on the part of the Begum.

30 Apr. 1793. also be liable to all the duties that belong to that character. She must be considered throughout as standing towards the British nation exactly in the same relation as France, Spain or Holland, or any other power with whom a public treaty is made.

I am extremely anxious upon this subject to have that matter understood, because, as it appears to me, a great fallacy has been introduced in the other part of the case, by confounding the characters and the principles upon which this inquiry is to be conducted. At one time, this lady is held up as the Princess of Oude, and a contracting party with the British nation in a solemn treaty. When it is complained, on the part of the British nation, that that state or power violated the conditions of the treaty, by committing acts of hostility against the British nation, then is she stripped of her crown, and is to be considered merely as a subject of the British nation, to be tried for high treason; and the evidence of her conduct respecting the British nation is to be examined by all the same principles, to be watched with the same strictness and liable to all the same objections, as if the Begum was holding up her hand at the bar, and was actually trying for high treason, and [liable] to suffer death in consequence of your Lordships' decision that the treaty had been broken.

Now, I only beg the Charge to be consistent with itself. If you charge the British nation and Mr. Hastings with the breach of a solemn treaty, let it be considered throughout by all those rules and principles that govern the intercourse between state and state, that regulate treaties, and that are considered to give validity to or to constitute a violation of them. These are the rules and principles that must apply to the subject; and the question must be, whether, under all the circumstances, in the year 1781, the British Government were not justly warranted in considering the Begum to have forfeited this guarantee, by her conduct towards the British nation, in giving aid and assistance to the enemies of the British nation, by employing this power and this wealth, which was impoliticly and unjustly committed to her custody, in giving assistance to a rebel in open arms against the British nation, in the year 1781.

Forfeiture of the guarantee by the Begum.

My Lords, I ask you whether, if I establish that fact, it is possible, with any justice, to charge the British nation with having violated, towards that power, a solemn treaty, and having broken the public faith; and whether all the Charge

does not retort upon those on whose behalf the treaty was made, and fix them to be the persons who were guilty of a base and flagitious violation of the treaty that had been entered into? 30 Apr. 1793.

My Lords, before I enter upon that subject, I ought for a single minute to advert to the other treaty made with the elder Begum; and I shall detain your Lordships but a very few minutes upon that subject, because that treaty stands certainly in a very different predicament. It was a treaty made in the year 1778—if made at all—by Mr. Middleton, after an express prohibition to make any treaty at all—to interfere at all with the elder Begum.

Treaty of the elder Begum.

The history of that business seems, as it is represented by the evidence, to be this:—that the elder Begum, being anxious to prosecute a voyage to Corbullah, and being interrupted in that favourite object, applies to Mr. Middleton for his protection. She makes certain complaints to him respecting her family concerns, and wishes his interposition upon that subject. Mr. Middleton communicates these complaints to the Board. Though the Board are perfectly ready to interfere on behalf of the younger Begum, with whom the treaty of 1775 had been entered into, yet they did, by their letter of the 23rd of March, 1778, expressly order Mr. Middleton not to interfere at all with respect to the elder Begum—excepting only by remonstrances with the Nawab against any act of oppression against her. That letter your Lordships will find in the printed Evidence, page 460.

Her application to Mr. Middleton.

He is ordered by the Board not to interfere.

To that I shall only add the positive testimony of the witness himself, as adduced by the prosecutor. The person who made the treaty has expressly told your Lordships, in page 470 of your Minutes, upon being asked whether he had any previous authority, either from the Board or Mr. Hastings, for entering into that agreement or treaty, that he had none!

The letter, therefore, written at the time, is an express prohibition from pledging the faith of the public; and the witness who made it, throughout his testimony, which I shall not go into the particulars of, has taken the transaction altogether upon himself, by expressly stating to your Lordships that it was his own act, unauthorised by the Board, and never communicated by him to the Board at all.

My Lords, I do not mean to say that no communication ever was made to the Board upon this subject, but the sort of communication that was made has been already distinctly explained to your Lordships, and I shall not go over that

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Irregular notification of the agreement to the Board.

part of the subject again. It appears to have been simply communicated in general terms, by a marginal note to a paper annexed to, and forming an enclosure in, Mr. Purling's letter in 1780; and all that is communicated upon the subject then is:—

"That an engagement had been made by Mr. Middleton, and produced by the Begum, for the purpose of protecting her in the enjoyment of her jaghires."

I only wish your Lordships to recollect what intimation is actually given of it; how much is disclosed; and the period at which that disclosure is made.

The treaty the unauthorised act of Mr. Middleton.

I think it perfectly clear that this treaty—as it is called—upon the subject of the elder Begum's jagir, was originally made without any authority; was never actually communicated to the Board; was the private act of the Resident himself; and that all that ever was done was that intimation that I have stated. But, my Lords, I am content to take that also as a treaty on the part of the British nation. Let it be so! Let both the treaties with both the Begums be considered as the treaties of the British nation with the power contracting with them on the subject. I say, in the first place, that, from the hour of each of them being made, the British nation constantly observed them: and I will now just refer your Lordships to a few documents, for the purpose of proving that, in all the intermediate period, from the year 1775 down to the year 1781, and down to the very period of their giving assistance to Cheyt Sing, there was a constant observance of these treaties.

Accepted by the British nation.

Interposition of Mr. Hastings on behalf of the Bow Begum, in 1776.

My Lords, the first instance in which the British Government under Mr. Hastings afforded protection to the Begum, in consequence of this treaty, was in the year 1776. The passage has been already read to your Lordships, and I will not repeat it. The great anxiety of Mr. Hastings is expressed in 1776, the year after making this treaty. Says he:—

"As the public faith is pledged by the act of our Resident at Fyzabad, she shall have the full benefit of this treaty and the strictest execution of it."

He there interposes, in terms the strongest that can be expressed, on her behalf. He states, with the humanity that actuated him in every part of his public conduct, his anxiety to avoid the smallest infraction of a public treaty, and to avoid even the appearance of oppression towards a person of her sex.

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In the printed Evidence, page 460, with respect to the Bow Begum, says Mr. Hastings:—

"Her grievances come before us on a very different footing. She is entitled to our protection by an act not sought by us, but solicited by the Nabob himself, and granted in compliance with his and her request. We, therefore, empower and direct you to afford your support and protection to her in the due maintenance of all the rights she possesses, in virtue of the treaty executed between her and her son under the guarantee of the Company, and against every attempt that may be directly or indirectly made to infringe them; at the same time that we recommend the greatest delicacy to you in every case of this nature, we desire you will act with firmness and resolution, and, as far as you can, with effect."

Further interposition of Mr. Hastings in 1779.

My Lords, in the printed Evidence, page 520, it is proved that again Mr. Hastings interposed on her behalf:—

"From the Begum's letters"—says Mr. Hastings—"and the papers of which she has sent me copies, I am surprised to observe that, although the Nabob has repeatedly entered into solemn engagements with her, and the name of the Company pledged for the performance of them, yet none of them have been observed any longer than the Nabob thought proper. Such instances of breach of faith bring our name, as well as the Nabob's, into discredit. The Begum informs me that she shall rest satisfied with the last engagement contracted with her by her son, to which you have set your seal on the part of the Company as guarantee, provided she can be assured it will be observed. I must, therefore, desire that you will make use of your influence with the Nabob to prevent his attempting any act contrary to those engagements; and if he should at any time so far forget himself as to make it necessary, you declare to him, peremptorily, in my name and on the part of the Council, that we will pay all due attention to the Begum, and afford her assistance in all matters when she may have occasion to require it, and which have a relation to these engagements."

Restoration of jagirs by the Board under the treaty with the elder Begum.

This is a letter dated the 29th of March, 1779. In the next year, 1780, a similar interposition was made. That was the transaction spoken to by Mr. Purling, in which it appeared that, as soon as ever the Board were apprised, by the intimation I have stated, that there was anything like an engagement made on the part of Mr. Middleton with the elder Begum, the Board direct, with respect to assignments that before were in contemplation to be made upon the jagirs—the Board instantly direct, in a letter they write to their Resident, that the jagirs shall be restored. That is in page 486 of your Lordships' Minutes. They say:—

"We have attended to the explanation and particulars which you have transmitted to us of the private jaghires, and authorise you to restore the assignments on them to the proprietors."

That letter is dated the 22d of June.

We have laid before your Lordships a letter written by

30 Apr. 1793. the Board, in the beginning of the year 1781, the very year in which your Lordships will find these faithless persons, after a uniform series of protection afforded them, to have broken their engagements with the nation. Your Lordships will find that, in February of that year, when the Board, having in contemplation the necessity of a [new] regulation, proposed to the Nawab the resumption of his jagirs, they made an express exception in that letter of the jagir of the Begums for which these engagements had been made. I shall close that part of the subject with referring your Lordships to what is stated on the part of the honourable Managers themselves; admitting that, up to the time when Mr. Hastings quitted Calcutta to proceed up the country, there had not been the least insinuation or hint against the Begums: that is in page 538 of your Lordships' Minutes. They are anxious to state it to your Lordships, and to impress it upon you, to show that, in the private communications which he makes at that time, and in which he mentions the disaffection of the Raja Cheyt Sing, he never throws out the smallest hint or suspicion against the Begums. And, in another passage, in page 584, they represent that Mr. Hastings, at that period of time, had never expressed the smallest insinuation or hint to the disadvantage of the Begums.

Regard shown to the interests of the Begums in 1781.

My Lords, I know that was stated for another purpose—to show that Mr. Hastings did not at that time suspect the infidelity of those persons. I mention it for the purpose of showing that, up to that period, Mr. Hastings or the British Government had never discovered the smallest intention of withdrawing from them the full benefit of the engagement which had been entered into. What was the conduct of the Begums? Did they, on their part, with equal fidelity perform the conditions annexed to these engagements?

Violation of the treaties on the part of the Begums.

In the first place, even the scanty sum—that small portion of the Nawab's patrimony which was to be delivered up—was not, in fact, delivered up at the time. Twenty-six lacs had been before advanced, and thirty remained. Of that thirty eleven, more than one third of it, were held back, and actually were not ultimately paid. The arrangement for the payment of them was not settled till the July following, the actual payment of a part of them not till the January following, which was more than a year and a quarter after the engagement had been entered into. And, at length, the Nawab was actually cheated out of four of the eleven lacs that the Begum had stipulated to pay.

Non-payment of the sum due to the Nawab.

The subject of this dispute, as it is called, between the Nawab and the Begum, respecting these eleven lacs, arose from an attempt on the part of the Begum, notwithstanding all the wealth that she had in her possession, to shift off the Nawab with a payment in goods, in part payment for the discharge of these eleven lacs. Upon this Mr. Bristow says, that she, availing herself of that parol agreement—for it was not stated in the written agreement, but in a parol understanding between the parties, that she was to pay part in goods—Mr. Bristow states, that she laid hold of all the articles taken in the Rohilla campaign belonging to the Nawab, and delivered them in at a most exorbitant rate; that she actually insisted upon being allowed no less than 40,000*l.* for some cloth, which was admitted by her own account to be worm eaten and damaged, and not worth one-fifth part of the value; that, with respect to some articles that were actually in possession of the Nawab's own people at the time, she immediately sent out to get them into the zanana, and then to deliver them up in part payment of the money. There was a person there who was to value on the part of both parties, and [who was at hand] for the purpose of receiving the goods. That man staid there; he lived there, and died there; but he never had any goods given him by the Begum which were to be valued by him, in part payment of this money. 30 Apr. 1793.

After all this conduct had been observed on the part of the Begum, she herself begins and makes a complaint, forsooth, in a letter received on the 20th December, 1775, of this part of the contract not being observed. That letter has been given in evidence on the part of the prosecution; and, my Lords, it is really a very curious letter. It is in the printed Evidence, page 445. This lady begins with representing her disconsolate situation—that, since the decease of the late blessed Nawab, she had bid adieu to all worldly affairs and with a broken heart given herself up to sorrow. Letter of complaint written by the Begum.

Now, with respect to worldly affairs, it is exceedingly true that she had bid adieu to all worldly affairs—save and except those that respect wealth and power; for the whole letter, from beginning to end, is upon no other subject than these two;—first, to persuade the Board to appoint two ministers, whom she nominates in the letter; and, next, to enable her to avoid the payment of the sum of money which she had stipulated to pay. She there represents that goods which

30 APR. 1793. she had delivered, and which belonged to her, had not been received by the Nawab and allowed in part of payment.

And it was in consequence of this letter that there is a passage of Mr. Hastings, in the consultation of the 3d of January, 1776, which was quoted on the part of the prosecution. Mr. Hastings, believing this representation of hers to be true, was endeavouring to afford her the protection she was intitled to under the treaty. The whole drift of her letter is to prevail upon the Board to remove the then minister, Murteza Khan. She says:—

Its object the removal of Murteza Khan.

"Murteza Khan is striving with all his might for the ruin of this ancient family, which he wishes utterly to destroy. If it is your pleasure that the mother of the late blessed Nabob, myself, and his other women and infant children, should be reduced to a state of dishonor and distress, we must submit; but if, on the contrary, you call to mind the friendship of the late blessed Nabob, you will exert yourself so effectually in favour of us who are helpless as to remove Murteza Khan."

That is the burden of the song: every part of it is—remove Murteza Khan!—

"And at least"—she says—"exert yourself so effectually in favour of us helpless women that Murteza Khan may be displaced"—the Prime Minister of the country—"and Mahomed Elich Khan and Mahomed Busheer Khan be restored to the offices they held in this soubah in the life time of the late blessed Nabob. By them the revenues will be collected, and whatever sums are due to the English chiefs I will cause to be paid out of the revenues."

Though she had bid adieu to all worldly affairs, yet, if her own ministers were appointed, she would consent to return to them, and take care that the Company should be paid out of the revenues what was due to them.

Objection of General Clavering.

I find, with respect to these two persons she recommends to be appointed ministers to the country, General Clavering observes, in the next page, 448,—

"I cannot consent to the Company's authority being employed in placing both Elich Khan and Busheer Khan in their former offices, agreeable to the Begum's request, because the Nabob, considering them as his mortal enemies, would never be prevailed on to acquiesce in their return, from the certainty that his removal from the musnud, and probably his death, would be the certain consequence of such an event."

My Lords, that is what is stated by General Clavering would be the probable effect of granting the principal petition in her letter; and Mr. Francis, in observing upon it, says:—

Concurrence of Mr. Francis in the objection.

"I cannot conceive that she has the least right to interfere in the Nabob's government. In a country where women are not allowed a free agency in the most trifling domestic affairs, it seems extraordinary that

this lady should presume to talk of appointing ministers and governing kingdoms." 30 Apr. 1793.

He then says:—

"I should have no objection, provided she can obtain the Nabob's consent. Without that, she can have no right to remove the immense wealth she possesses"—this is in the year 1776—"or even her own person, out of his dominions."

The request refused.

My Lords, the Board did not think proper to comply with her request of removing the minister of the country, and appointing those whom she wished. It seems probable that that produced upon the mind of the Begum a mortal antipathy against us, added to what had been conceived before—that she was not at liberty to have her own persons in the management of the affairs of that court, as she had had in the lifetime of the Wazir; that her own party was kept out, and that by the influence of the English another party was sustained in office; and that her views of ambition were frustrated by the operation of British influence.

Irritation of the Begums at the cession of Benares.

I find another circumstance that gave her great offence at this period of time, as is described by Mr. Bristow, relative to Benares: for the dismemberment of that country from the Nawab's dominions was a subject of bitter resentment on the part of the Begums. They expostulated against it at the time. They resented it, and endeavoured all they could to prevent it; and Mr. Bristow particularly draws this inference with respect to it:—

"How far she may be well affected to the Company I leave you to consider, when you attend to that circumstance respecting Benares."

That observation is made by Mr. Bristow, in the letter I have alluded to of the 3d of January, 1776. I have not got the last evidence. I cite it from the Appendix to the printed Evidence, page 15:—

"The Begum had great influence in the late Vizier's time. On the Nabob Azoph ul Dowlah's accession, he at once placed the governments in the hands of Murteza Khan, which disgusted both her and her adherents, particularly her eunuchs, who have their views in keeping the wealth in the Begum's possession. The principal, Behar-ali-Khan, enjoys her entire confidence; and how far she may be better affected to the English I leave to the consideration of the honourable Board from the following fact. On the conclusion of the treaty between the Company and the Nabob, the Begum blamed his Excellency very highly, and insisted on his not ceding Benares, offering of herself a sum of money in lieu of it. The proposal was afterwards made to me by the Nabob."

30 Apr. 1793.

Mr. Bristow's account of complaints made to him by the Begum.

My Lords, the subject of these complaints respecting the money is particularly stated in that same letter of Mr. Bristow. In consequence of a reference to him upon that subject, he had, in a previous letter of the 30th of November, 1775, stated them, upon a complaint made to him—which your Lordships will find in page 443, and it is also in page 1899. A part of it only was read by the prosecutor, and we have read the remainder:—

"Respecting the treaty with the Begum, I have had many letters from her complaining of its not being abided by, and that the Nabob does her great injustice in disputing her right to effects which she wants to deliver to him; but he asserts them to be his property, as they were under the charge of his consuma, and only deposited in one of the buildings adjoining to the Begum's palace. In regard to the dispute about the effects, I must inquire more particularly, as his Excellency's officers may be in the wrong; but I know also the behaviour of the Begum's eunuchs and servants whilst I was at Fyzabad, that they were inclined to procrastinate the payment upon any frivolous pretence that occurred."

Groundlessness of the complaints.

And, afterwards, when the subject had been more fully inquired into, in the beginning of the year 1776, every subject of this letter, as matter of complaint against Mr. Bristow, turned out to be ill founded, as the honourable Managers have already stated, with respect to Mr. Bristow. The complaints against the Nawab, and the complaints upon the subject of Murteza Khan, are directly contradicted by the Nawab's letter received upon the 9th of February, 1776, which letter I have stated before. Your Lordships will find it in the printed Evidence, page 1827. The Nawab says:—

Exculpatory letter of the Nawab;

"The whole of what is contained in that letter relative to Murteza Khan is entirely false; the charge against him being without the smallest foundation. My mother writes that I was offended at her having entered into a correspondence with you, and prohibited her from continuing it, by desiring to know why she did so. What can I say on this subject? I leave you to judge whether it is likely I should make such a speech; but, since my mother positively declares that I did forbid her, it is well! Let her produce any letter or writing of mine upon this subject. But if she persists in this false accusation there is no help for it, as there is no possibility of stopping people's tongues."

He then says:—

"Consider that when my own mother, who lives in my house, is intent on mischief towards me, my other enemies will undoubtedly derive confidence and encouragement therefrom."

confirmed by Mr. Bristow.

The letter being referred to Mr. Bristow, upon the subject of the effects, he says:—

"When I was at Fyzabad, I am persuaded none but respectful language was used to the Begum.

"[One thing only that I remember could be taken amiss, and that was my telling her, that unless she paid the money the treaty became null. Whether such a hint was necessary I submit to the consideration of the honourable Board; for the eunuchs practised every art to delay the payment, protesting in positive terms that the Begum had neither money nor effects, though, upon my one day representing to her that I should immediately leave Fyzabad unless the conditions were fulfilled on her part, she found means to send six lacks in specie in less than three hours after; and it was hardly a month before that she asserted her inability to pay a single rupee. The copy of the Begum's letter to me making this assertion I troubled the honourable Board with, in my address of the 9th September last. The third complaint, I am persuaded, is partly erroneous, from the Begum's claiming every article of the late Vizier's property, even to his military stores. The Nabob would be very glad to receive anything, but the appraiser appointed by the mutual consent of both parties, remains at Fyzabad without having any goods offered him but such as are already in the possession] of the Nabob's own officers." 30 Apr. 1793.

This letter is the one that the Board directed to be sent, a separate number, in the packet by the Hillsborough.

Exculpatory letter of Mr. Bristow.

There is another letter from Mr. Bristow, of the 25th of January, 1776, in which he exculpates himself upon this subject of the complaints made against him, and states the difficult part he had to act. He says:—

"The only menace I ever used was to threaten to set off from Fyzabad, and leave the Nabob and Begum to settle their differences without the mediation of the Company, for that it was unnecessary for me to stay unless my representations were attended to. It is astonishing that the Begum does not produce any of my letters, which were numerous; and upon this evidence the honourable Board might at once acquit or condemn my conduct.

"In my negotiations between the Begum and the Nabob I have been very disagreeably situated, as I never could give entire satisfaction to either. My motives for entering into them were for procuring money, at a time that the Nabob could not have taken the field without it, and his affairs must have materially suffered."

The Nawab transfers to the Company the residue of the debt due from the Begum.

Without pursuing the particulars of this discussion respecting the dispute upon this article of the goods, I will only state to your Lordships, that, in the result, the Nawab himself, being perfectly unable to obtain payment from the Begum, transferred the residue of the debt. Upon the 30th of April, there is an account of that from Mr. Bristow—that the debt was transferred to the Company in that month. In consequence of that, repeated applications were made for the payment of it by Mr. Bristow; the Board frequently objecting to the interference of Mr. Bristow upon the subject. But applications were made for the payment, and, at last, in the month of July, Mr. Bristow, by a letter, which is in page 452 of the printed Evidence, gives an account of the final settlement. Of the nine lacs, which the Nawab

30 Apr. 1793. stated to be due to him, he was obliged to give up four; and the Begum again, notwithstanding the wealth she had in her possession, renewed the same proposal of paying the small sum of five lacs by instalments—by goods—and a way, if possible, to evade still further the performance of the contract.

Further evasion on the part of the Begum.

Final settlement of the dispute.

Mr. Bristow, who had perceived what her conduct had been respecting the goods in an antecedent period, objects to that mode of payment, but is at last obliged to submit to the payment by instalments; and the actual final discharge of even these five lacs was not made till January 1777. Your Lordships will find the account that is given in; the articles likewise that were obliged to be taken in part of payment by the Nawab—those articles that I suppose were in the zanana, and belonged to the Begum on that account; amongst which, I perceive thirty-five elephants and a hundred and seventy-six camels, which she charged to the Nawab's account, and made him take in part payment.

This is the history of that dispute which is given in evidence on the part of the prosecution; and throughout which your Lordships will perceive that the Begum pursued the same line of conduct that she had begun in the first letter that she wrote after the death of the late Wazir, which is the first attempt that she made to induce a belief that she had no money at all, before any part of it was delivered up, in March, 1775, which is in the printed Evidence, page 1835. Her conduct from that time throughout, antecedent to the treaty, was endeavouring to evade the surrender of all that she could of the Nawab's property; and, after the treaty was made, to evade the performance of every condition that she could, with any safety, avoid the performance of.

The Begums aid Cheyt Sing in his rebellion.

And now, my Lords, I come finally to that part of her conduct by which she did, notwithstanding all the protection afforded, in the way I have stated, on the part of the British nation, take advantage of the hour of our distress; and, when we were surrounded by the enemies of the British nation on every side, there and here, after all the liberal protection afforded to these ungrateful and perfidious persons, did they then make use of the territorial and the military power, the resources which they were suffered to keep in their possession, for the assistance of Cheyt Sing, when, in the month of August, 1781, he broke out into open rebellion against the British nation, and endeavoured, as far as he could, with the assistance of those persons, to complete the overthrow of the British power in that part of India.

30 Apr. 1793.

Perilous position of the Company's affairs.

And, at that period, your Lordships will find that nothing more was wanting than the success of this internal commotion to have actually completed the ruin of the Company's affairs, staggering as they were at that time under the accumulated pressure of distress and difficulty, arising from one of the settlements being involved in war with one of the greatest powers in India—with Hyder Ali, and the whole settlement of the Carnatic embraced by his troops; when the other side of India was involved in a war with the other principal power in India — the Mahrattas; when all our resources were exhausted; when the danger pressed even upon the Bengal provinces, by another party to the league that had been formed against us — by 30,000 troops at Cuttack hovering upon our provinces, and ready to burst upon us, the first moment that a material change should take place in our affairs; and which they were only prevented from doing by the address of Mr. Hastings, and by the relief that from time to time was sent them by Mr. Hastings—and which he is accused for having received!

War with Hyder Ali and the Mahrattas.

When that was the situation of our affairs in every quarter — at that period of dismal dismay, apprehension and despondency, to the friends, and of sanguine hope to the enemies, of the British nation — that at that period, of all others, they might then throw off all dependency upon the British nation; [that] they might then get rid of an odious foreign power; [that] they might then remove the bar to their ambition; [that] they might then be able, one to set up for himself in a state of independency, the others, removing the only bar to the appointment of the minister that they wished to succeed, to [recover] the whole possession of that influence they had enjoyed in the lifetime of the late Wazir, and which the influence of the English prevented the continuance of, after the accession of the present Nawab—then it was that these three perfidious persons, Cheyt Sing, an open rebel, and the two Begums, his associates, who assisted him in acting against the British nation and the British power, did unite all their means, which they were suffered to retain so long — which they had been actually protected in the enjoyment of, most impoliticly—did unite all their efforts, by every means, in the latter end of the year 1781, to effectuate the overthrow of the British power, by an union with the enemies of the British nation, and to prevent the affairs of the India Company being ever again restored to any state of prosperity.

Critical period selected by Cheyt Sing and the Begums for the rebellion.

My Lords, in entering upon that subject, I shall, in the

30 Apr. 1793. first place, consider the principle upon which Mr. Hastings acted; and, next, the application of it.

Mr. Hastings' assumption that the Begums forfeited the protection of the treaty by acts of hostility.

Mr. Hastings is accused of having been guilty of a breach of public faith. I would ask, first, if such was the conduct of the Begums, whether they, by the acknowledged law of nations, did continue to be intitled to the protection of a solemn treaty of guarantee? Mr. Hastings conceived, by the law of nations, that every treaty is upon an implied, if it be not of an expressed, condition of mutual friendship; that hostility committed is a violation of the implied condition by which all treaties are sanctioned. Mr. Hastings conceived that a treaty of guarantee stands, at least upon this respect, on the same footing as every other treaty, with an additional obligation on the part of the power that enjoys that guaranteed protection to observe all good offices towards the power giving them that protection, and especially with respect to the subject of that protection.

Supported by Grotius and Vattel.

My Lords, I find that doctrine stated in all the writers upon this subject. I will only refer your Lordships to one passage in Grotius, who says: —

"[Those things that are done contrary to friendship do break that peace which was contracted under the condition of friendship; for what the duty of friendship alone may require from others ought also here to be performed by the right of covenant.]" *

And I find Vattel, in his second book, states the same doctrine:—that, if the protected power does not fulfil its engagements with fidelity, the protector is discharged from its, and may refuse protection in future, and may declare the treaty broken, in case it judges it for its advantage.

My Lords, if mutual friendship be an implied condition of a treaty of guarantee—if it were so with respect to the present treaty—I conceive another proposition to be perfectly clear:—that the violation of any article of a treaty, express or implied, dissolves the whole, [leaving it] at the option of the other contracting party, either to demand the fulfilment of the particular article, or to declare the treaty to be totally null and void. That doctrine is stated very distinctly in all the writers upon the law of nations, and, particularly, in addition to what was quoted by my learned friend, by Puffendorf. He states—and I will not tire your Lordships with authorities upon this subject, which abound throughout all the writers upon the law of nations—he states, that all the articles of a public treaty are in the nature of conditions;

By Puffendorf.

* Hugo Grotius, "The Rights of War and Peace." Translated from the Latin into English. London, folio, 1738, p. 705.

that, if any one of them be not fully performed by one of the contracting parties, the other contracting party is at liberty, either to demand the performance of that broken article of the treaty, or, at its option, to declare the treaty to be null and void. The same is stated in Vattel, book 2, cap. 13, sec. 200. He says: — 30 Apr. 1793.

"It is sometimes more expedient for one of the parties to disengage itself altogether from its promises—to break the treaty—and it is undoubtedly the right of the party so to do."

Justice of the principle acted on by Mr. Hastings.

But, my Lords, upon this subject there can be no doubt, that a violation of mutual friendship, which is the basis of the treaty — the implied condition upon which the whole rests, namely, mutual friendship — that a violation of that is undoubtedly a dissolution of the whole contract. It is stated that an act of hostility once committed puts the other party in the state of a defensive war; at liberty immediately to attack in the shape of war; to deprive the other contracting party of every right that it possesses. And, my Lords, without going into authorities upon this subject, it seems to be a self-evident proposition, that one party never can be bound to protect another in the enjoyment of the means which that other is employing for the destruction of the protecting power. Therefore, I conceive that there can be no doubt respecting the principle upon which Mr. Hastings acted — that it was warranted by the established law and practice of nations.

Reference to the conduct of Government during the American war.

I shall only just, upon this subject, refer your Lordships to a matter of history which is in all your Lordships' recollection, and which I particularly allude to because it formed a part of the conduct of this Government, during the very period of the transactions concerning which Mr. Hastings is accused. What was the conduct of this Government to the foreign power who assisted our rebellious subjects, in a declaration of their independency, by an attempt to render them so? I need only refer your Lordships to the memorial presented by Lord Suffolk to Count Welderen, in the year 1778, and the memorial of Sir Joseph Yorke at the Hague, in the year 1780, where expressly the doctrine is stated:—that, if these parties do not fulfil the conditions upon which the treaties are made with them, of implied friendship, — if they give assistance — if they act in any respect, even by declaring the independency of one of the dependent subjects of this country—from that moment they are to be considered as entirely absolved from all treaties, and in the situation of a party commencing hostility against us.

Parallel case of Cheyt Sing and the Begums.

30 Apr. 1793.

Surely then, I shall hardly be told that the same rule did not prevail with respect to our foreign dependencies—that Mr. Hastings was not to proceed upon the same principle, with respect to those who were endeavouring to make Cheyt Sing independent, as was observed with respect to those who were endeavouring to make the American colonies independent? All the same principles apply in both cases. I take it that the principles that were established, and have been acted upon by the universal practice of all nations, for their common safety, in their conduct towards each other, were the principles that governed Mr. Hastings' conduct, upon the subject of the treaty that is now under consideration.

Application of the principle.

My Lords, if the principle be right, the next question is as to the application of it. I have stated it only hypothetically—if the Begums did pursue that conduct. I proceed now to inquire whether Mr. Hastings was warranted in believing this protected power to have done those acts which, by the law and usage of nations, are considered as acts of hostility, and a dissolution of a treaty of guarantee. And here, my Lords, I beg that the subject may be considered upon its proper footing, and by the fair rules that are applicable to it. I do not profess to adduce before your Lordships that sort of evidence that would be proper in the case which this has been constantly endeavoured to be confounded with—the case of a charge of high treason preferred by a sovereign against a subject—where, undoubtedly, nothing is to be received in evidence but direct proof of the fact—the act of the party accused, proved by a witness who saw or heard the fact. But, my Lords, I will beg leave to ask,—are these the principles upon which the conduct of one state is to be considered with respect to another? If they are so, there never yet was a treaty that was not broken. There never yet was a minister, in any public station, who could possibly justify himself, tried by that criterion. How do men act in their government, in political and moral conduct? Do they act by previous proof upon oath—upon that sort of evidence which is proper to be received in a court of justice, on a charge of high treason? Is it not the duty of a person in a public station to receive and attend to all reports, to weigh and to consider them, to collect together all the circumstances, to exercise an honest judgment on the subject, and to say, putting them all together, upon what he knows, hears and observes from all about him,—do you believe the fact? If you believe the fact of their committing the hostility, whatever be the mode by which that belief is

Nature of the evidence.

Judicial evidence not required in dealings between kingdoms.

wrought upon the mind, the instant there is a warrantable, rational, ground of belief, it becomes the duty, so far from its being the crime, of the public minister to act upon that belief. 30 Apr. 1793.

Public notoriety constitutes proof.

I might venture to ask your Lordships, what legal proof, what judicial evidence, have you of any one transaction that is at this moment passing in a neighbouring country? What have you had from the beginning? The notoriety. Persons who were there giving you intelligence of what they saw, heard and observed. Was it ever doubted that, in every public situation and for every public purpose, it is the duty of a minister to act often upon what he suspects to be true, even without being able to produce direct judicial evidence when called upon, especially at a distant time, to say what were the circumstances that induced that belief at the time?—"Tell me who brought you such and such intelligence? Who called upon you? Who talked to you? How do you know the fact? You shall be held to strict legal proof of every fact, to substantiate that act of yours by which you conducted yourself towards that contracting party, and conceived yourself warranted in believing that party to have broken the treaty."

Impossibility of trying the Begums for high treason.

I might almost venture to say—the absurdity of such a doctrine! to conceive a contracting party is to be tried for high treason, before the treaty is declared to be broken! We might as well set about trying France or Spain, or any other foreign power with whom a public treaty is made. We had no power to try the Begum. There was no court, no process, no proceeding, by which it was possible she could have been tried by the British nation for high treason. The crime of high treason could not be committed by her against the British nation. Acts of hostility might be committed; and, standing in the relation, which both the Begums did, merely of a power with whom a public treaty had been made, they might violate that treaty; but the question whether a treaty be broke or not is not a question for a municipal tribunal—is not a question to be tried by the rules, upon the principles and by the evidence, that rightly apply in the case with which it has been perpetually confounded, namely, the case of its being a trial for high treason.

Their relation to the British nation as parties in a treaty.

The Begums, undoubtedly, stood in the relation to the Nawab both of subjects and of contracting parties in a treaty. But the relation in which they stood towards the British nation was that of a contracting party only. The

30 Apr. 1793. charge made against Mr. Hastings is, for having violated the solemn guarantee of the British nation. We must, therefore, consider this question between the Begums and the British nation by those rules that I have taken the liberty of referring your Lordships' recollection to, and which apply to a subject of that description. I will then ask your Lordships, in the conduct of this inquiry, applying these rules and these principles to the evidence now before you—to the circumstances that are stated to have taken place in the country and at the time—whether any rational ground of doubt can be entertained by anybody that Mr. Hastings formed a just conclusion upon the subject, in believing those persons to have forfeited their title to the protection of the British nation?

Alleged conspiracy of Mr. Hastings against the Begums.

Your Lordships have been told, upon this subject of the hostility of the Begums, that it is the pure invention of Mr. Hastings; nay, that it is a foul, a wicked, plot and conspiracy, formed against the Begums for the purpose of depriving them of their rights. It is not merely asserted by the honourable Manager, but it is put upon your Lordships' Minutes, in the printed Evidence, page 599:—

"The Managers for the Commons acquainted the House they should next proceed to show the progress of the proceedings against the Begums; the origin of the plot; the manner in which it was conducted, and the manner in which it was executed."

And, in page 621, there is the same idea conveyed in another expression:—

"The Managers for the Commons acquainted the House they would now proceed to lay before them the first traces they could discover of the conspiracy formed against the Princesses of Oude, and the first determination of Mr. Hastings to accuse them, in order to possess himself of their treasures; preparatory to which they would show the avowed motive upon which he set out from Calcutta."

The hostility of the Begums alleged to be a fabrication of Mr. Hastings.

Here, my Lords, is the assertion that all the idea of hostility committed by the Begums is a plot and conspiracy. Now let us consider how it is made out in proof that this is, what it is represented to be, a plot of Mr. Hastings —his idle fiction—and which the honourable Manager has pledged himself to your Lordships upon; for he said:—

"I pledge myself to prove to your Lordships that, at the moment of his seizing the palace, he never once heard of this extraordinary rebellion, which was as notorious, according to Sir Elijah Impey, as that in London, in 1745. I pledge myself to prove, that he never once heard of it."

All the reports of it are dated as arising from the 15th of November, and not before that period of time; and the

whole of it is stated, upon your Lordships' Minutes, to be a plot and conspiracy of Mr. Hastings. 30 Apr. 1793.

My Lords, I take for granted it was upon the belief of that that these Charges have been brought against Mr. Hastings—upon an idea that it was a plot; that it had no existence; that it was an idle fiction, a dream, of Mr. Hastings, or rather, a foul invention, for the purpose of a corrupt and wicked attempt. In this plot and conspiracy, your Lordships have now upon your Minutes no less, I think, than between thirty and forty conspirators—persons who, in one way or other, contribute either to the belief of the fact, to circumstances respecting it, or to what they saw and heard respecting the Begums and the conduct of their ministers. When such a charge as this is made, of its being a pure invention and plot of Mr. Hastings, I will beg your Lordships to advert to the number of witnesses, whom I will state to your Lordships, who have in one way or the other, either by stating their belief of the fact, or stating circumstances that came to their knowledge—all concurred in the proof of this that is stated to be Mr. Hastings' plot. I will beg leave to advert to the list of them.

Necessary complicity of the Council.

First, in this plot of Mr. Hastings are engaged the only two members that filled the Council at the time, Mr. Wheler and Mr. Macpherson. For that, I will refer your Lordships to page 921 for Mr. Wheler, and for Mr. Macpherson to page 923 of the printed Minutes. Secondly, in this plot of Mr. Hastings are concerned all the Residents in the country at the time: Mr. Middleton, in the printed Evidence, pages 607, 608, and all his letters, both public and private, upon the subject speaking of it; Mr. Johnson—in the printed Evidence, page 879; Mr. Bristow—in his letter of the 31st of March, 1783. I have not got the reference to that, but it is in the Appendix, page 248, and was given in on the last day of our evidence. And, in addition to that, I will refer your Lordships to the evidence of Mr. Hudson, with respect to Mr. Bristow. Merely to obviate an intimation, that seemed to be made on the part of the prosecution, that Mr. Bristow had expressed a different opinion, we directed a search to be made, in order to discover, if we could, that there were any documents coming from Mr. Bristow expressing a different opinion upon the subject. Mr. Hudson has answered in the negative; and that one document to which they have referred shows the opinion of Mr. Bristow to be, that their conduct during the insurrection was what I have stated.

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Of the officers upon the spot.

Next, in this plot are engaged all the British officers upon the spot at the time:—first, Major Macdonald—printed Evidence, page 252; Captain Williams—printed Evidence, page 1922; Lieutenant-Colonel Hannay— printed Evidence, pages 256 and 266; and Captain Gordon, page 1909. My Lords, these were all the British officers serving in the country immediately adjoining to Fyzabad, the country where the transaction arose. Two of these we have produced as witnesses before your Lordships. We have been deprived of the evidence of one of them by his death, and the testimony of the other we have not been able to produce by his being in India; both which circumstances are in evidence before your Lordships.

Next, in this plot are engaged the native officers serving under those British officers:—Ahlaud Sing, page 239; Denoo Sing, subahdar, page 240; Nurdeal Sing, pages 242, 243; Bejig Sing, subahdar, page 243; Meram, munshi to Captain Gordon, page 244; Mir Ahmed Ali, page 245; Doond Sing, subahdar.

Of the civil and military officers at other stations, &c.

Next, in this plot are concerned the civil and military officers serving at other stations, or actually residing with Mr. Hastings at Chunar:—first, Sir Elijah Impey, pages 627, 633, 634, &c.; Mr. Markham, page 1767; Lieutenant Colonel Blair, page 1777; Captain Birrell, pages 1774, 1775; Captain Wade, pages 1793, 1799; Captain Grey, page 1798; Colonel Popham, page 1811; Captain Symes, page 1811. Then, my Lords, there are two other persons, who were in high character, that were spoken of by Captain Williams—Brigboken, a raja in the country—page 1928, and the Rani of Bansee—page 1929; and some officers who made a report to Captain Williams, who are disclosed likewise in the same page; Mr. Wombwell, pages 1996 and 2000; Major Lumsden, page 1979; Colonel Duff, page 1971; and Captain Shuldham, page 1968. I have now enumerated above thirty persons who have given testimony respecting this plot of Mr. Hastings.

Universal credence given to the alleged fiction of Mr. Hastings.

Now, my Lords, these witnesses, some of whom have been examined before your Lordships—several of them British officers of great rank and character—speak upon this subject, which Mr. Hastings never heard of, but which was his own plot for a wicked purpose—they speak of it as a transaction upon which they, and all with whom they conversed at the time and since—now for eleven years—all entertained a firm belief of the fact. Colonel Duff, in par-

ticular, arrived, I think, in the month of December last, and had, therefore, occasions of knowing the sentiments of the people down to the year 1792—more than eleven years after the transaction had taken place. All these persons say they believed the fact at the time; they believe it now; they never heard any man in India, who had any opportunity of knowing anything upon the subject, express a doubt of the Begum's hostility. Therefore, we have this extraordinary circumstance attending that which is represented to be the fiction of Mr. Hastings—that it gained universal belief; not a belief merely at the time, collected by transient reports of the day, but it is the continuing opinion. Down to the present day they believe it. They all believe it, after all the discussion upon the subject. The circulation of all the eloquent speeches to prove the contrary has not yet produced a contrary belief in the mind of the people of India; but, throughout India, there is still a general belief of this plot and fiction of Mr. Hastings. What an unfortunate circumstance is this to the Begums, who are represented, as I shall presently show your Lordships they have been, as persons who, not only did not act against the British nation, but who actually assisted us in the hour of our distress! What an ungrateful nation must the British nation be to that power that assisted them, that contributed to their relief in the hour of their distress! They all are so wicked, so ungrateful, as still to be confederate in this plot and conspiracy of Mr. Hastings against them; not only not to have a single person not to speak for them, but to be all united in the belief of this idle fiction against them! This is an extraordinary circumstance attending this fiction of Mr. Hastings.

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In the next place, I find that this report, that never was heard of by him at the time he seized the palace, is a report spoken of as having taken place, I think, at no less than seventeen different places, in seventeen different parts of India. I will beg leave just to enumerate them likewise:—circumstances that actually took place, or the report prevailing in India, at the time or about the time—reports respecting this which Mr. Hastings is supposed to have invented at Chunar, and never to have heard of prior to the seizing of the treasures. At Gungowah in Goruckpore—Captain William's evidence, page 1927 of the printed Minutes; at Bansee, page 1929; at Bukra, page 1928; at Amorha, page 258; at Tanda, pages 1909, 256 and 240;

Places where the report of the rebellion was prevalent.

30 Apr. 1793. at the fort of Bustee, page 240; at Mow, page 240; at Goruckpore, page 239; at Bulrampore, pages 242–243; at Fyzabad, spoken of by several witnesses, pages 1925, 258, 256, 266; at Lucknow, page 1996; at Chunar, spoken to by several witnesses, Colonel Blair, Mr. Middleton, Mr. Markham, Colonel Popham, and so on, and Sir Elijah Impey, pages 1777, 627, and other pages; at Cawnpore, page 1967; at Calcutta, page 1971; at Bidjey Ghur, page 1793; at Pateeta, page 1789. These are seventeen different places where circumstances took place, or the report prevailed, leading to the general belief likewise of this plot and conspiracy of Mr. Hastings!

Evidence of Capt. Edwards.

My Lords, opposed to this, and for the purpose of performing the pledge given to your Lordships that no such report was ever heard of, one witness has been called on the part of the prosecution—Captain Edwards, printed Evidence, pages 779 and 780. Captain Edwards came with the Wazir to Chunar, and returned with the Wazir from thence to Lucknow. The Nawab arrived, I think, upon the 11th of September, and went away on the 20th. Nine days he was at Chunar. Captain Edwards was at an outpost at Chunar. He says, that he did not hear the report. As he explains it afterwards, he does not recollect that he did. He did not hear it then, but he heard it in a fortnight after. Consequently, this would not prove the proposition undertaken to be proved, namely, that no such report prevailed antecedent to the seizing of the treasures; because a fortnight after would still confine it to the month of September or the beginning of October, The seizing the treasure was, your Lordships know, in the month of December or January, and the resolution for it in the month of November.

Forgetfulness displayed by Capt. Edwards respecting the drought of 1779.

In the next place, Captain Edwards will pardon me if I take the liberty of saying that a great deal of stress ought not to be laid upon the recollection of the events that he speaks to at that period, because there is proof now of the defect of his memory applied to another transaction of equal notoriety. He has not merely upon non-recollection, but by positive oath, denied the existence of any drought in the interval between 1774 and 1783, during the period that he was in the country—and he was absent only seventeen months, coming back in the year 1777, and staying till the year 1783. Speaking of the comparative bad state of the country at one period and another, he was asked whether that was not referable to a natural cause, the existence of

which was matter of universal notoriety—a drought which had taken place in that intermediate period of time. Captain Edwards has positively denied that any such drought existed. 30 Apr. 1793.

I am persuaded Captain Edwards did not mean to misrepresent what he knew to be true; but it does appear that, upon that subject, Captain Edwards is contradicted by no less than four witnesses:—Mr. Purling, a witness called by the prosecution, whose evidence is in page 830; Major Gilpin, page 888; Mr. Middleton, page 946; Major Lumsden, page 1941; besides the account given of that drought by Mr. Middleton, in his letter at the time to the Board, which is in the printed Evidence, page 1886, where, speaking of the drought in 1779, he says:—

Effects of the drought as described by Mr. Middleton.

> "The misfortune has been general throughout the whole of the Vizier's dominions, obvious to everybody, and so very fatal have been its consequences that no person of any credit or character would enter into any engagements with Government for farming the country without a heavy deduction in the last year's jumma, which his Excellency has been compelled to allow to all who have hitherto been appointed to farms; and some who engaged, even under these circumstances, have to my knowledge made most urgent application to the Nabob and his ministers to be released from their obligations, and allowed to relinquish their farms, which they found they could not hold but at a certain loss to themselves. You will very soon be convinced of the reality of this misfortune."

Evidence of Major Gilpin.

Another witness has also been called on the part of the prosecution—Major Gilpin, printed Evidence, pages 905 and 909. Major Gilpin has stated his disbelief upon the subject as applied to the younger Begum—to the Bow Begum. But Major Gilpin, with a candour that does him honour, has explained to your Lordships the grounds of that opinion. He was not upon the spot at the time; he did not come there till the month of June 1782; and the only reasons he has stated to your Lordships for the opinion entertained upon that subject were—a conversation with those persons whom Major Gilpin states to be in the interest of the younger Begum, and who, at that period of time, were undoubtedly interested in contradicting the report, because at that time our affairs were relieved from the difficulties pressing upon them—and the letters that the Begum herself produced for the purpose of showing that she had afforded protection to Captain Gordon. What the effect of these letters are, your Lordships have heard in evidence; what ought to be the effect of them upon your Lordships' opinion

30 Apr. 1793. and judgment, I shall take the liberty, with your Lordships' permission, of observing by and by.

He maintains the complicity of the elder Begum.

Major Gilpin, however, states his firm and clear opinion to be, that the elder Begum was concerned in assisting Cheyt Sing's rebellion. That witness, therefore, goes only half the length of the proposition. What he has stated he has stated the grounds of; and upon these your Lordships will judge. Upon the other part of it, Major Gilpin is a witness in support of the plot; believing confidently to this hour that the elder Begum was concerned in it, and having stated his opinion, likewise, that the younger Begum was under influence very much of the elder.

Inconclusiveness of his testimony respecting the Bow Begum.

Therefore, with respect to the testimony of Major Gilpin, I trust I may not consider him as a witness that proves much on the part of the prosecution, under all the circumstances of that testimony; and particularly when your Lordships come to examine, by and by, the direct proof that goes to the acts of those persons who were particularly connected with the younger Begum. I conceive, therefore, that, if it were to rest here, standing upon the general belief and report of those persons whose evidence I have alluded to, I should be intitled to your Lordships' judgment, at least, to say that Mr. Hastings was warranted in the belief of what was the belief of the whole country at that time and since —that it would not be a crime in him to have concurred in the universal opinion and belief on the subject.

Weight of general opinion.

My Lords, I hope I shall also be intitled to go one step further, and that, without examining a single fact, a single document, a single circumstance, your Lordships, forming your judgment upon a transaction in a remote country, would be induced to believe that what is so generally credited must have a good foundation in truth. If we doubt the result of any written accounts of transactions in a remote country, what is the reference? What do people say? What is the opinion of those who were on the spot, who have the best means of knowledge, who form their judgment from a great variety of circumstances which they cannot afterwards recollect or detail, much less present in the shape of legal evidence? Each man judges from what he sees, hears and observes, on the events of each day, which go to make up the total of belief.

I would ask your Lordships, if any one of you were called upon now to state the grounds of an opinion you entertained respecting any one transaction that took place at a distant

period, whether you might not very well say—"I believed the fact at the time: everybody believed it. If you ask me now why I believed it; what were the circumstances; who told me of this fact or of that fact; what letters, what circumstances were produced"—I would ask whether your Lordships upon many subjects would not say—"I can only remember such was the impression of my mind at the time. I believed it. Those I conversed with believed it. We all credited it, from what we saw, heard and observed, of what was passing in the country at the time?" 30 APR. 1793.

Surely it would be a hard thing for a public man, called upon to justify his public conduct and accused of malice—it would be a hard thing to condemn him, because he is not able to produce all the documents, all the circumstances, all the persons, in proof before your Lordships, to make out the ground upon which he formed that judgment, which every body in the country formed at the time and retains down to the present hour!

The allegation of Mr. Hastings' disbelief of the Begum's guilt unsupported by evidence.

Your Lordships have been told, truly, that Mr. Hastings himself did not believe it. What Mr. Hastings believed, I presume the honourable Managers cannot be so competent to judge of as himself. He best knows what he thinks and what he believes. Has he said that he did not believe it? No. What is the evidence that he did not believe it? Nothing, but the production of several letters which say nothing about it one way or the other; that, in a number of letters written to the Board, he stated nothing one way or the other upon the subject. Well, is it impossible for a person to postpone the communication of any event from any motive but from the non-belief of it? Is that a necessary inference, in order to prove that Mr. Hastings did not believe it? Every document that is produced, wherein he says anything about it, says he does believe it; and the only evidence to prove he did not believe it says nothing about it!

Proofs of the contrary

But it does not rest there; for Mr. Hastings did, at the time, as in evidence before your Lordships, assert to everybody about him his firm belief and conviction of the fact. We are, therefore, to go upon a conjectural conclusion against the direct evidence of the declaration of the person himself asserting that he did believe it, and other persons upon their oaths swearing that they heard him at the time declare that he did believe it! Then, upon that subject, we have nothing but conjecture and assertion opposed to positive testimony.

But, in addition to that, are your Lordships to say that

30 Apr. 1793. he did not believe what everybody else did believe? Why are you to suppose that? Was he not more likely to have correct and actual intelligence of what appears clearly by that evidence to have been passing in the country at the time? Is he not, therefore, more likely to have given full credit to that, and to have known the circumstances which constituted the belief of others, and to have formed the same conclusion from them?

Here is another pretty extraordinary circumstance likewise—that Mr. Hastings, in a matter that is supposed to be his own fiction, created for the purpose of his own vindication, should be the only person who is silent upon the subject! and that this singular circumstance should take place—that that which is his fiction is the subject of universal belief, and that that in which he is silent is in universal circulation over the country; for I have shown it the universal belief at the time, and that it was in various places in circulation at the time! If Mr. Hastings then was not anxious to circulate it, if his letters are silent upon that subject, he was not the person propagating that report. Then it did prevail without him, and did prevail in different places without the suggestion of the person who is supposed to have invented it.

Objection by the Managers to the admission of report as a ground of action.

But, my Lords, upon this subject I confess I was a little surprised to hear the argument that is pressed against Mr. Hastings. "Reports, as a ground of action, are not proper to be received in evidence to lay before your Lordships, to judge of the conduct of a public man acting upon these reports that prevailed in the country." They are not proper evidence! And yet, my Lords, the very persons who wish to exclude that evidence from being received, to justify the conduct of a public minister, have put upon your Lordships' Minutes, in the evidence of the first witness produced upon this very Charge, from one end to the other, hearsay and reports; that is, in the testimony of a young man of twenty-four, Mr. Holt, who was examined to what passed in the country when he was sixteen or seventeen years of age: his evidence is hearsay and report, from beginning to end—and to substantiate what?—to establish particular facts—the wealth of Colonel Hannay; the particular rate [at] which he [was] assessed. The witness says—"I know nothing but from hearsay." "Well, did you ever hear this?"—"No." "Did you ever hear the contrary?"—"No." Then we go on to another report:—"Did you ever hear this?"—"No." "Did you ever hear the contrary?"—"No." And so your

Hearsay evidence of Mr. Holt adduced by them.

Lordships will find in repeated instances the report of a report, a hearsay at second hand, and which is expressly stated by the witness in these terms—"a hearsay at second hand" of these very persons. Your Lordships will find this witness's examination, for thirty pages, to these reports. This is to support this doctrine, that reports are not evidence upon which a public man ought to act. This is the only case in which reports are admissible evidence. The rules of evidence apply only in the field.* There is the proper place to watch whether a leading question is put to a witness or not; whether his evidence is taken down in writing; and whether he knows expressly the facts upon which he swears. But here, when your Lordships are, in the highest tribunal in the kingdom, examining into particular facts, this is the proper place in which reports are competent evidence and ought to be received upon this subject; and when we took the liberty to suggest a doubt as to the admissibility of that evidence to the honourable Managers, and said, at least we hoped that, if that latitude was taken on their part, a similar indulgence would be allowed on ours, the answer given by the right honourable Manager who was examining the witness was this—and it is put down upon your Lordships' Minutes—that they disclaimed it as an indulgence, insisting upon it as a right, to examine a witness to hearsay and report of the sort that I stated. 30 Apr. 1793.

Review of Mr. Holt's examination.

That I may not be supposed to have misrepresented the examination of Mr. Holt, I will beg to refer your Lordships to his evidence: it is in page 382. The very first inquiry of this young gentleman, who it appears was in the country of Oude at the age of sixteen or seventeen, and in the country of Baraitch and Goruckpore only for seven months, at that early period of his life—though we have heard sometimes observations respecting the experience of young men trailing a pike abroad or bending over a desk at home—the first question put to this witness, who is brought here from his peculiar importance to be examined first upon the subject—the first question put to him, after asking him about his office and employment, is—

"I wish the witness to speak to the state of Oude during that period, as fully as he can."

Upon which, Mr. Holt answers:—

* So written in all the copies of the Report. The sense requires "inferior courts."

30 Apr. 1793.

"Really that is too general a question. Before I answer, I could wish to communicate something to your Lordships. I hope I shall not be deemed guilty of any impropriety or disrespect to your Lordships, if I should take the liberty of stating that I believe I shall be more able to answer that question, to the satisfaction of everybody, if particular questions are put to me instead of general questions. My abilities in language, I apprehend, will not be sufficient to a task so arduous as speaking of the general state of a country." "Whether you had any opportunity of knowing that, during the time of your residency in that office, the revenues of the country were considerably, or in what degree, diminished?"—"I have ever understood they were considerably diminished." "Had you any opportunity of knowing it?"—"Merely from report." "Whether the witness knows they were assessed at a much lower jumma or rate than formerly?"—"I have only heard so." "Had you any, and what, reason to believe that that report was ill founded?"—"None." "From your observation of the face of the country, had you any reason to think that that report was ill founded?"—"None." "Whether you had any reason, from anything that happened in your official experience, to believe that report was ill founded?"—"None." "Have you any reason, from your knowledge of the country, or from what came to your knowledge in the particular department of the revenue, or from what came through your own office as Resident, to believe it was well founded; and, if you have, state that reason?"—"I have no other reason, but only what I have heard. I speak only from what I heard."

And then he states that he was in the country seven months.

"How did you understand it?"—"It is merely upon hearsay." "What do you mean by hearsay—credible information or loose rumour?"—"Only hearsay,"

So, my Lords, here is a distinction taken. If it is credible information, and not loose rumour, then it is good evidence of the fact. Now, whether ours is credible information or loose rumour your Lordships will judge.

"Was not such an opinion common?"—"Whether it was common or not I cannot pretend to say. I have heard such a thing." "Did you ever hear to the contrary?"—"Never, that I know of. It is possible I might have heard, but I really cannot charge my memory."

On the second day's examination—

"I desire to know, in explanation of an answer given by the witness yesterday, whether or no, when he said he had not heard the report of the fortune of which Colonel Hannay died possessed, which was spoken of by above eight or ten people, he meant to express that that was the opinion of those ten people only, or a general report?"

The House observed that the witness had spoken of a report which he had heard from ten people, and that to ask him to the rumour of a report was going a great way. The Manager for the Commons said the witness said he had not heard it from above ten people; the question, therefore, that they wished to ask was—whether the witness understood that

that was the opinion of those ten people only, or that the opinion was general? The witness was asked—and so he goes on to be asked—about it, whether he understood from the conversation of those ten people that they were reporting a general rumour, or their own opinion? They were reporting a general rumour, and the belief which they themselves expressed of it. 30 APR. 1793.

"I understand you to say that you heard these ten persons report at second hand the reports of others; was it hearsay at second hand?"—"Yes."

An objection being taken, the Managers for the Commons contended that it was competent to them to give evidence of the general fame of the country; that it was uncontradicted; and that from its notoriety it must have come to the knowledge of the Defendant; and desired the witness might be asked what he had heard. Here is the doctrine stated broadly, that, for all the purposes of accusation, general report is good evidence against Mr. Hastings in a court of justice, and to charge him with not acting upon it. But, when he acts upon that which is proved to be general report, then it is matter of accusation against him; then reports ought not to be received and attended to; we must have nothing but such evidence as would be proper in a trial for high treason.

"Did you believe it to be true? Had you any reason, and what, to believe it?"—"I had no other reason but only what I have heard." "Whether you have any reason to believe it not true?"—"None."

So that the witness has no reason to believe one way or the other—to believe it to be true, or not to be true.—"I desire to know of the witness whether he has any reason to disbelieve it?"—"None." That is the result of his testimony. That is the *plus* and *minus* of his evidence. First he is asked, whether he knows anything about it; and then, whether he has ever heard it contradicted; and there are a great many questions of the same sort. I will not tire your Lordships with going through the whole of it, but I beg your Lordships, as a matter of curiosity, will read this evidence, which introduces a charge against Mr. Hastings, the whole of which is bottomed upon an accusation against Mr. Hastings for acting upon reports. I beg your Lordships will have the goodness only to cast your eye over the evidence of the first witness, who is chosen from his importance to precede the whole of the evidence upon the Charge, and which occupied your Lordships a whole day and a half upon this subject.

CONTINUATION OF THE SPEECH OF THOMAS PLUMER, ESQ., COUNSEL FOR MR. HASTINGS, IN SUMMING UP THE EVIDENCE IN DEFENCE ON THE SECOND ARTICLE OF THE CHARGE, RELATING TO THE BEGUMS OF OUDE; 2 MAY, 1793.

2 MAY 1793.

Reality of the Begums' hostility to the Company. Objections raised to its credibility.

MY LORDS, I proceed now to the further consideration of the proposition which the honourable Managers have undertaken to make good; namely, that the hostility of the Begums against the British nation, in the year 1781, was the mere plot and conspiracy of Mr. Hastings. Your Lordships have been told that this is not merely a fiction, false upon the face of it, but is grossly improbable and absurd. It has been converted into ridicule, as that which nobody can entertain for a moment the belief of its being true. A rebellion, it is said, "plotted by two old women, headed by two eunuchs, and quelled by an affidavit!"* that the very idea of it was contrary to the inclination of these ladies to design, and beyond their means to execute; that, in truth, all their reliance was upon the English protection against the power and influence of the Nawab, and, consequently, their interest was rather to support than destroy that power; and that, consequently, they did not possess in themselves any power or military resources that could have enabled them to execute the plan, if they ever should have been foolish enough to devise it.

My Lords, as to this speculative theory of what may be designed, what may be wished for, what may be attempted by these ladies encloistered in their zanana, I presume not to follow them into their recesses to inquire; neither shall I discuss the question how far it is an universal proposition, that nobody ever can attempt what he has not the power to execute, nor to wish what is contrary to his true interest to attain. That the uniform experience of the protection of the British nation imposed a duty and an obligation upon them not to have availed themselves of any unfavourable aspect in the British affairs to have endeavoured to complete the overthrow of the British nation, at

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* See the Speech of Mr. Sheridan; *supra*, vol. i. p. 507.

a period when that event was much to be apprehended, I readily admit. But, as to the question of what may be probable or not, as an argument, it appears to me quite decisive against the speculative theories upon this subject, on the other side, to oppose to it that which appears to me to be a sound answer :—if this hypothesis is so absurd and improbable in itself, it never could have been credited at all in the place where that fiction was propagated. 2 MAY 1793.

All those arguments of a theoretical nature, it must be admitted, can be best judged of upon the spot. The temper, the disposition, the means, the object, the plans, the persons —these can be best judged of by those who live in the country, who for years had opportunities of observing them, and of knowing all the aspect and situation of affairs. Had it been a proposition, therefore, of the sort stated, it never could at the time have gained belief, much less could every body have remained in the belief of it down to the present hour.

General belief throughout the country.

My Lords, therefore, without opposing any theory on my part to the theory on the other side, I oppose the general belief of all persons at the time and since as a decisive answer against this argument *à priori*, that the thing itself is improbable. Opposed to the fiction of Mr. Hastings, your Lordships have received two propositions advanced on the part of the honourable Managers. They are upon your Lordships' Minutes, and I will take the liberty of referring to them. And of all the extraordinary propositions which this extraordinary cause has produced, [than] the two that I have now to state to your Lordships, considering what the state of the evidence on the part of the prosecution was, and the evidence that we have now produced, which must have been, without great inattention, in the knowledge of those who stated these propositions, more extraordinary ones have not been advanced, nor more wholly destitute of all foundation.

Allegations of the Managers that the Begums aided the English.

My Lords, two propositions are stated upon this subject, both of them directly the reverse of what is proved by the evidence. The first proposition is in page 663 :—

"The Managers for the Commons acquainted the House that, having submitted to them evidence respecting the proceedings in Barraitch and Gorruckpore, in refutation of the charge against the Begums having been concerned therein, they should next proceed to prove that the Begums never gave the least assistance to Cheit Sing, but, on the contrary, exerted themselves in favour of the English."

That is one proposition. It consists of two parts:—a

2 MAY 1793. — denial of asssistance to Cheyt Sing, and an assertion of assistance given to the English.

That the assistance sent to Cheyt Sing from Oude came from the Nawab.

My Lords, another proposition, which is in page 694, is:—

"The Managers for the Commons acquainted the House they would next read a passage from the Benares Narrative, to show that, by Mr. Hastings' own admission, if any assistance was sent from Oude to Cheit Sing, it most probably came from the Vizier at Lucknow, and not from the Begums at Fyzabad; and they should afterwards show that the thousand troops stated by Mr. Hastings to have been raised at Fyzabad came from Lucknow."

Denial of these statements.

Here are two propositions that respect two different powers, the Wazir and the Begums. I will show the direct reverse of both these propositions to be the fact;—that the Wazir, who is stated to have afforded assistance to Cheyt Sing, never did so, but, on the contrary, afforded most important assistance to the British nation at that period; and that the Begums, who are denied ever to have given the least assistance to Cheyt Sing, but, on the contrary, to have exerted themselves for us, did at that period give the most important assistance to Cheyt Sing and no effectual assistance whatever to us.

My Lords, the first proposition respecting the Wazir the honourable Managers have attempted to prove by the adduction of a passage from Mr. Hastings' Narrative, containing, as they state, an admission of the fact that the Wazir sent the assistance, and not the Begums, to Cheyt Sing. I will beg your Lordships' attention for a moment to that passage, because it appears to me, when the whole of it is attended to, to prove the reverse of both the propositions. It is in page 695 of your Lordships' Minutes. Mr. Hastings stated, what was certainly very true, that reports had prevailed to the disadvantage of the Wazir, and such had been communicated to him; that the persons about him might be liable to suspicion, and [not] the Wazir himself—and that your Lordships will particularly attend to;—but that, with respect to the Wazir's principles and conduct, Mr. Hastings had no doubt at all, and never did impute to him what the honourable Managers state he did.

Passages in the Narrative adduced in support of the allegations.

I will beg your Lordships' permission to read the passage:—

"In the meantime, I had received several intimations imputing evil designs to the Nabob, and warning me to guard myself against them, and especially to be careful that I did not expose myself to the effects of concealed treachery by visiting him without a strong guard. Many circumstances favoured this suspicion."

Now your Lordships will hear what this passage is that now follows, upon the subject of Fyzabad :— 2 MAY 1793.

"No sooner had the rebellion of this zemindary manifested itself than its contagion instantly flew to Fyzabad"—

this is the passage to show that no assistance came from thence—

"and the extensive territory lying to the north of the river Dewa, and known by the names of Goruckpore and Baraitch. In the city of Fyzabad, Nawaub Allea and Jenauby Allea, the mother and grandmother," —these are the two Begums—"of the Nabob, openly espoused the part of Cheit Sing, encouraging and inviting people to enlist for his service, and their servants took up arms against the English."

This, my Lords, is the passage quoted to prove the reverse of the Begums having taken any part against the English.

"Two battalions of regular sepoys in the Vizier's service, under the command of Lieutenant-Colonel Hannay, who had been entrusted with the charge of that district, were attacked and surrounded in various places; many of them cut to pieces; and Colonel Hannay, encompassed by multitudes, narrowly escaped the same fate. The Nabob Vizier was charged with being privy to the intrigues which had produced and fomented these disturbances; and the little account that he seemed to make of them served to countenance the suspicion. I can truly say for myself, that I never afforded it the slightest degree of credit."—

That is to prove that, by Mr. Hastings' own admission, it was so—

"Neither his character, the tenor of his past conduct, the expectations which I knew he entertained of assistance and relief from myself, nor his inability to support himself without the protection of our Government, allowing me for a moment to entertain a thought so injurious to his fidelity and so contrary to probability."—

This is direct proof of the fact, your Lordships see—

"Yet I was not perfectly free from apprehensions similar to such a suggestion. The Nabob was surrounded by men base in their character and improvident in their understandings, his favourites and the companions of his looser hours. These had every cause to dread the effects of my influence on theirs; and both these and the relations of the family, whose views of consequence and power were intercepted by our participation in the administration of his affairs, entertained a mortal hatred to our nation and openly avowed it."

Your Lordships see a distinction taken between those about him and the Wazir himself. These all joined in prescribing the most pernicious and fatal counsels to the Nawab, representing this as the time to deliver himself from what they described as the yoke of servitude. Now we come to the Nawab again :—

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"Although he firmly rejected all their persuasions, and I am assured of it, yet he himself was at their mercy, and it was in their power to use both his authority and his person for the perpetration of their own designs; nor could I use any precaution to avoid them which would not appear to proceed from a distrust of the Nabob himself."

Then he sums it up thus:—

"I never communicated my apprehensions nor acted from them, and I had the satisfaction of receiving the Nabob, of maintaining an intercourse with him with every mark of the most secure and mutual confidence, and of parting with him with every demonstration of mutual satisfaction."

My Lords, I have read now the whole of that extract, which is gravely put upon your Lordships' Minutes and quoted as a proof that the Nawab was the person who sent the assistance, by Mr. Hastings' own admission, and not the Begums, from Fyzabad. In addition to that, I would beg your Lordships to remember that Mr. Hastings, in the same passage from whence this is quoted, mentions particularly the assistance he had received from the Nawab. He states, in the printed Evidence, page 123, that his original intention having been to meet the Nawab, and being involved in difficulties produced by Cheyt Sing's insurrection, he intimated to the Nawab a wish that he would not prosecute the original purpose of his journey:—

Testimony of Mr. Hastings to the fidelity of the Nawab.

"But"—he says—"I wrote a letter to the Nabob requesting him to return to Lucknow, and remain there until I should have leisure from the actual disturbances to prosecute my original journey. The Nabob refused to comply with this injunction, and, on the first intimation of my difficulties, resolved to join me; and he executed this purpose with such apparent earnestness, that he made his first stages with no other attendance but about a hundred horse and about four companies of his body guard, with his usual domestic attendants. As soon as I was informed of this, to remove any unfavourable impression of my former letter under the construction of distrust, I wrote another to the Nabob, expressing the warmest sense of such a testimony of his attention, apologizing for what I had before written from an unwillingness to involve him in a scene of trouble, and expressing my desire to see him at Chunar, according to his own wishes."

Mr. Hastings also, in a letter to Mr. Wheler of the 8th of September, 1781, in the printed Evidence, page 207, says:—

"I less fear the actual enemy than the contagion of example. I am much pleased with the Nabob."

In another letter from Mr. Hastings to Mr. Wheler, in page 208:—

"The Nabob Vizier, whose conduct I must in justice applaud, arrived this morning at his camp on the opposite side of the river. There I met him."

In another letter from Mr. Hastings to Mr. Morgan, page 210:— 2 May 1793.

"I had less cause to guard against the actual enemy than against the contagion of example. The Nabob has acted most honourably."

Services rendered by the Nawab's body guard.

Here, my Lords, is the admission of Mr. Hastings quoted to prove that the Wazir was the person who assisted Cheyt Sing and who acted treacherously towards us! It was from that quarter, as appears by the very same evidence, that we received the first and most important assistance, by the arrival of Lieutenant Polhill, with the Nawab's body guard, from Allahabad, which arrived upon the 27th of August. On the 27th of August, Lieutenant Polhill arrived with six companies of sepoys, belonging to the Nawab Wazir's body guard, stationed at Allahabad. This appears by the same paper, page 124. It states there that that party attacked and defeated, on the 29th, a considerable body of troops under the command of a principal chief of Cheyt Sing, named Shebaub Khan; that the advantages gained by this success were the removal of that part of the enemy, and the acquisition of a considerable booty of grain, which had been the object of the enterprise. This is the person that never assisted us, but assisted the enemy! The very same document states:—

Pecuniary assistance from the Nawab.

"It appears that, in consequence of an intimation that had been given of the state of affairs to Lucknow, Major Roberts, with his regiment and a lac of rupees in silver, arrived, on the 13th of September, from Lucknow; to which place, as I have before related, he had been ordered to repair for the guard of my person in my intended visit to that capital. A further supply of 50,000 rupees was, a few days after, received from the Nabob's aumil of Allahabad."

Evidence of Sheikh Mohammed.

My Lords, here are, therefore, instances of actual assistance afforded by the Wazir—by money, by the arrival of troops—at the critical period of our danger. Opposed to this, what is there to prove that the Wazir assisted Cheyt Sing? No evidence whatever! The evidence offered to your Lordships upon the subject, if it tended to prove anything, would tend to prove that the troops came from Lucknow, but not from the Wazir—if it proved anything. What it does prove your Lordships will judge by and by. The evidence that I allude to is the list of the troops—which evidence is given on the part of the prosecution by an officer in Cheyt Sing's army—a list of the troops constituting the rebel forces; in which, in describing them, he states that "there were 1,000 men, nudjeeves, sword men, I think from Lucknow." At that period of the rebellion, when the Wazir was undoubtedly

2 MAY 1793. absent from his capital, having quitted it, I think, before the 19th of August, and having been actually at Chunar on the 20th of September—it was in that intermediate period of time that any troops, if they came at all, did come from Lucknow; and, consequently, they were troops that could not be sent, or at least were not probable to be sent, with the privity and knowledge of the Wazir;—[an assertion] which rests wholly upon the authority of that officer, Sheikh Mohammed Mir, who was a commandant of troops in Cheyt Sing's service, and who might very well know with accuracy all that respected those troops under his own command, but might very easily mistake with respect to the particular place from whence a body of troops came that did not before constitute any part of Cheyt Sing's regular force, and were only a force sent to him from Oude. He might very easily mistake what particular place they came from in Oude. The fact of such a body of troops being in the army of Cheyt Sing he would know; and to that he is a competent and a proper witness. I do not mean to say that that list of his, annexed to his affidavit, is no evidence to prove that they came from Lucknow, but I am only saying this—that upon that particular subject he may easily be mistaken; that, if they came from Fyzabad and not from Lucknow, it is possible that a commandant in Cheyt Sing's army might have made a mistake.

The affidavits. But, my Lords, give me leave now to observe what is the conduct pursued, on the part of the prosecution, against Mr. Hastings. In order to prove the fact that the 1,000 najibs which were in Cheyt Sing's army came from Lucknow, they conceived it to be quite sufficient for them to produce a paper annexed to the affidavit. The affidavit then is competent evidence to prove the fact. Then it is perfectly right to receive affidavits to substantiate a fact. Then this black officer is perfectly a good witness to substantiate that, though the only witness upon the subject, and though opposed to all the probabilities in the case. Then, when we come to adduce all the affidavits, to prove a contrary proposition, all the affidavits are ragman's roll. They do not deserve the least sort of attention, and prove no proposition whatever! Now, my Lords, let us be a little consistent. The affidavits are all before your Lordships. They are all given in evidence. They are always made use of when they prove any fact for them. Surely I have a right to rely upon the same papers when they prove any facts for the Defendant.

I believe I have now stated to your Lordships what is the result of the evidence upon this first proposition of assistance afforded by the Nawab Wazir to Cheyt Sing, and the negative of it to us. 2 MAY 1793.

The next proposition is that which respects the Begums at Oude; concerning which your Lordships will remember two assertions are made on the part of the prosecution. I will now, with your Lordships' permission, present the result of the evidence before you upon that subject; and I flatter myself that, without the aid even of the general belief of the country, when your Lordships come to attend to the circumstances that are disclosed, which are now upon your Lordships' Minutes, judging of them fairly, as I am sure you will do, as a narrative of events happening at the time, in the result there cannot remain upon the mind of any of your Lordships a doubt now of the real conduct observed by the Begums at that period of time;—that they were not friendly to the British nation, but were hostile to it, affording powerful military aid and assistance to a rebel in open arms.

Evidence of the Begums' participation in the rebellion.

My Lords, in the investigation of this question, I presume that I have a right to consider any covert assistance afforded to a rebel in open arms to be equally hostile with assistance given openly. It must, with respect to the evidence, be made out; but, if the fact be substantiated, I conceive it to be a clear principle of the law of nations that, where actual assistance is given, covert or open, to an enemy or rebel in arms against a nation, that is tantamount to hostility—is a commencement of aggression on the part of that power, and dissolves the treaty that is made with it.

Covert assistance.

My Lords, again I hope that in this discussion I may assume two principles:—in the first place, that we are not to require evidence that the nature of the thing does not admit of. By that I mean that your Lordships are not to expect evidence of an act of the Begums themselves, in their own proper persons, coming out into active force against us, when on the part of the prosecution we are told that they are persons enshrined in a sanctuary—that even the gaze of admiring eyes would be inexpiable pollution to them. It is hardly fair, I think, to call upon me to adduce evidence of their being seen in open day—actually proving by the witnesses who were present that they saw them act, and heard them give the directions for military aid and assistance to Cheyt Sing. All that I can do, in a case like that, is to show, as would be sufficient with respect to any power in

Nature of the evidence.

2 May 1793. the world, that they acted through the medium of their accredited ministers—their ostensible servants—persons known to be in their confidence, and who must be presumed to act with their privity and their authority. All the states of Europe act by these rules.

Principals responsible for the conduct of their agents.

With respect to the powers of Europe, you do not expect evidence of the personal act of the sovereign himself or of the individual with whom you make the treaty. It is enough if the ostensible ministers of the country, if those who are employed by the power with whom you have contracted—those who are known to be in their confidence and directing all their affairs—[are proved to have acted]. What they direct to be done must be considered as the act of the person that employs them. And here again, my Lords, I hope I may have the benefit of a principle endeavoured to be pressed hard against Mr. Hastings, to make him responsible for the acts of every agent of an agent, to the lowest extremity and to the last push that it can be driven—to infer his implied knowledge, his implied authority and implied privity, in the acts of every person under him. If Mr. Hastings is to be in every respect responsible for those who acted under him, though in the most remote way connected with him, surely it will not be said to be an unfair inference respecting the Begums, that what was done by Jewar and Behar Ali Khan—those that Mr. Bristow, in 1775 and 1776, states to enjoy their entire confidence, those who had the management of their jagirs, those who had the possession of their treasures, those who had the direction of all their concerns—surely, it will not be too much to say that what I show to have been done by those persons must fairly be considered as the acts of the Begums themselves!

Guilty knowledge imputed to the Begums.

But, my Lords, if I carry it one step further, and show that, not only by general implication the knowledge of the Begums must be presumed, but that there was an actual direct communication to the Begums by a British officer upon the spot, and yet that the same acts continued after that complaint, I shall ask you, my Lords, whether you can entertain any doubt but that the conduct of the persons acting at that period was fully known to and approved of by the Begums themselves?

Reality of the rebellion.

My Lords, I am now to consider what are the specific acts complained of with respect to the Begums. The honourable Manager has said that he has been hunting with all the industry of a historical antiquary to find out this

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rebellion; where it existed; when it began; or any one circumstance respecting it.* My Lords, I know the manner in which some antiquaries seek for the support of a favourite proposition; and, undoubtedly, for what the honourable Manager was searching for in the evidence to support his position, he might have looked with all the industry of the most industrious antiquary that ever existed, and looked for it to the last day of his life, and, I believe, he never would have found any evidence in support of it. But if, instead of pursuing antiquarian researches in the Royal Society, he would have been so good as to look at all the evidence upon the subject, there is there to be found, I conceive, the most clear, distinct, manifest proof of acts of aggression committed; the place where; and the time when.

Charges against the Begums.

My Lords, what I state to have been done by the Begums is shortly this:—first, that assistance was given to Cheyt Sing by sending troops to his army to fight against the British nation; next, that assistance was given to Cheyt Sing by preventing succours arriving, at a critical moment, to the relief of the British forces acting against Cheyt Sing. These are the two circumstances that I state the evidence proves;—active, positive, assistance given to the rebel Cheyt Sing, and direct prevention of succours coming to the relief of the British nation.

Admission of the rebellion of Cheyt Sing:

My Lords, one fact is perfectly clear, and admitted between us;—that on the 16th of August, and from that time to the 20th of September, there was actually a rebellion rising in the province of Benares. That rebellion, I am aware, has been attempted to be palliated and to be justified—upon what grounds your Lordships have seen, in the discussion of the first Charge—but the fact of a rebellion existing is not disputed. That, from the 16th of August, when the two Grenadier companies and the three British officers were murdered at Sivalaya, did Cheyt Sing erect the standard of rebellion, collected and arrayed his troops, and met the British forces in open arms against them. That fact is established beyond all doubt.

and of insurrection in Baraitch and Goruckpore.

Next, my Lords, it is beyond all doubt clear that, very soon after that event, he was in the neighbouring country, in Baraitch and Goruckpore, contiguous to the jagirs of the Begums; the jagirs of the Begums having on the one side the country of Baraitch and Goruckpore, and on the other, a little further distant, the country of Cheyt Sing;

* See the Speech of Mr. Sheridan; *supra*, vol. i. p. 579.

2 MAY 1793. that, in point of fact, there did exist, soon after the rebellion of Cheyt Sing, an insurrection in that country also. It is perfectly clear that, in that country of Baraitch and Goruckpore, were stationed troops under British officers, whose assistance at the critical moment of the rebellion, namely, after its first commencement, from the 16th of August till the time when the tide began to turn in our favour, was a most important object and much to be wished on the part of Mr. Hastings, who was at that time cut off from all communication by the position of the rebels in the country of Benares, [who were] endeavouring by all possible means to prevent any succours coming to him.

My Lords, these two facts are not disputed. Let us see then, whether, by the account given now by the officers upon the spot of what actually passed at that period of time, the conduct of those persons, acting powerfully to the aid of the rebel, is not plainly to be discovered in both the instances that I have stated. My Lords, in the first place, I find a piece of intelligence which, though in itself it may not seem intitled to any great degree of attention, yet, coupled with what afterwards happened—the time when it was made known, when it is not possible to impute it to any design in the person that relates it, or that he could be a party in this fiction—this plot—and this conspiracy, or could have dreamed of it at that time—as a circumstance connected with what afterwards fell out, seems to me of very great weight indeed. It is this:—that, before Cheyt Sing broke out into open rebellion, he was advised and encouraged by these perfidious persons in his rebellion. It appears, by a letter of Dr. Balfour, that, so early as in the month of November, 1780, he had intelligence given him, from a person in whom he states he had confidence, that a message was sent by the Begums to Cheyt Sing, advising him not to comply with the orders of the British Government, and promising him assistance if he would resist. That fact was notified at the time. It has been proved upon oath by Mr. Markham that he had that intimation at the time, in the year 1780; and it is repeated again by Dr. Balfour on the 28th of August, 1781, twelve days after Cheyt Sing's rebellion.

Balfour's evidence.

The Begums advise Cheyt Sing to resist the British.

My Lords, this is also clear—that, after that advice had been given him, he did effectually follow it; that he never did from that moment comply with a single order of his superior. On the 2nd of November, 1870, was the demand made upon him for the horse. Mr. Markham, your Lordships

remember, has proved that he never furnished one; that he never did, in point [of fact,] comply with any order of the British Government upon that subject, from the month of November, 1780, when it was issued, till the time of his rebellion, on the 16th of August, 1781. It is also perfectly clear that, in the month of March, 1781—as appears by a private letter written by Mr. Markham to Mr. Hastings, and which accidentally found its way upon your Lordships' Minutes, coming out upon the cross-examination—Mr. Markham states that Cheyt Sing at that period was waiting to see whom fortune would favour in the event, and declaring to his minions that, if any unfavourable event happened, he would declare independence. These are circumstances disclosed long—long—prior to this pretended fiction of Mr. Hastings. 2 MAY 1793.

What happens immediately upon the murder at Sivalaya Ghat of the British troops? Instantly it is communicated to Fyzabad. And your Lordships will find a very strong circumstance indeed—that an agent from Cheyt Sing is received at Fyzabad immediately after he had broken out into open rebellion. For what purpose was an agent sent to the power that had promised assistance beforehand? For what purpose, do your Lordships believe, is an agent sent by the Begums after he has broken out into rebellion? My Lords, that circumstance is disclosed in an account sent from Fyzabad, and given by a person whom, on the part of the prosecution, it is imputed to Mr. Hastings as matter of blame that he should not have examined, because he must necessarily have proved something decisive against him. I mean Hoolas Roi. Though, upon Mr. Middleton's affidavit and upon his evidence, he only states that it was a news writer who actually sent that intelligence to him, yet, upon the cross-examination of the Managers, it appears that the person who sent that intelligence was Hoolas Roi. Cheyt Sing's agent at Fyzabad.

Dr. Balfour's letter is in the printed Evidence, page 199—confirmed by Mr. Markham in page 1891. The circumstance of an agent being actually sent apppears upon the printed Evidence, pages 255, 256; and the person who actually sent it is proved by the testimony of Mr. Middleton to be Hoolas Roi:—printed Evidence, page 730. The letter of Mr. Markham's that I mentioned, which is dated in March, 1781, your Lordships will find in the printed Evidence, page 1714; and it appears from the printed Evidence, page 1533, that, from the period I stated, of the 2nd of

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November, 1780, that demand never was complied with on the part of Cheyt Sing.

Irritation of the Begums at the cession of Benares.

My Lords, it will be remembered that this country of Benares was the province dismembered from Oude, and on account of the dismemberment of which Mr. Bristow, on the 3rd of January, 1776, expressed that he had considerable doubt of the Begums being well affected to the British nation:—

> "How far"—says he—"she may be well affected to the British nation I leave you to consider"—

from the circumstance which he relates of their opposition to the acquisition of Benares by the Company.

This circumstance, this place, this country, the loss of which from the ancient possessions of the family had been occasioned by the British influence, and by the treaty of May, 1775, seems to have rankled in the minds of those persons; and it surely may be thought not an improbable thing, that they were not very averse to see the power who was stationed in that country likely to become obnoxious to that power that had separated it from the empire to which it had formerly belonged.

My Lords, immediately upon the agent arriving, what is it that happens? Mr. Hastings is accused of not having prosecuted an inquiry into these circumstances. At a subsequent period, that inquiry was supposed to be conducted by the commanding officer upon the spot, by the late Resident—the late and present Residents. The opinions of the late and present Residents, Mr. Bristow and Mr. Middleton, I have already stated. The opinions and evidence of the commanding officers upon the spot I will now state to your Lordships, [as to] what actually passed in their own sight and knowledge.

Early successes of Cheyt Sing's rebellion.

I will now, with your Lordships' permission, consider what are the circumstances stated immediately at that critical period of the war, after the 16th of August, and before the 20th of September. My Lords, upon the 20th of August, a further advantage was obtained by Cheyt Sing over the British troops, by the destruction of Captain Mayaffre and his detachment at [Ramnagur]. The outset, therefore, of this contest bore an unfavourable aspect to the British affairs. Then was the period of pressure and distress. What conduct then was observed at that period? Your Lordships will find it described by four British officers in different stations at the time—Captain Williams at Khanghur, the remote extremity of the country of Goruckpore, Captain Gordon at

Tanda, Major Macdonald at Amorha, and Colonel Hannay at Fyzabad. 2 May 1793.

What is the account that all the officers upon the spot give of an assistance afforded to us, and of the negative of any assistance given to Cheyt Sing? Upon the 28th of August, the Wazir, who is supposed to have acted against us and for Cheyt Sing, issued his orders to Colonel Hannay, directing him to assemble the troops that were stationed in the country, to consist, I think, of 1,000 sepoys and 500 horse, who were to rendezvous at Akberpoor, and to proceed from thence to the relief of the British troops at Chunar. It was of infinite importance that that succour should be received. It was not received. Why was it not; and by what means was it prevented? It was prevented entirely by the acts of those upon the spot, instigated to it by the conduct of the Begums, by letters, by rewards offered by their emissaries, at every place in the country, endeavouring to prevent that seasonable succour arriving which was ordered by the Nawab, and which Colonel Hannay was in the act of assembling for the purpose.

The march of Col. Hannay obstructed by their orders.

Your Lordships will find that Captain Williams' force at Gonghowa mutinied against him, and that he was unable to go to Benares, as he has proved positively to your Lordships. He stated that the ostensible cause, at first, was the arrears due to his troops; but, being asked here a question—"What was the real cause?" he has stated to your Lordships a very strong and material fact—that it was reported to him by his commanding officer that, in his absence, a short time before, there had been emissaries from the Begums in his camp applying to his subahdars,—one of the subahdars being a person who had formerly been employed in intrigues at the court of Fyzabad, and another of them engaged in acts likewise of a similar nature; that these two subahdars had been tampered with by an emissary of the Begums; that a person in the habit of a priest had been there; that he observed those persons clandestinely assembling the troops from that time; that he imputed to that the conduct of the troops very soon after, who had before borne their arrears without having acted upon it. Not but that the circumstance of their arrears might make them more accessible to overtures, on the part of those who offered to pay them their arrears; but the immediate cause is referred by an officer here, upon his oath, to be an emissary, arrived in the camp a short time before, who was practising upon the troops, and inducing them not to go to Benares. It is, therefore, indisputable that that which was

Troops under Capt. Williams tampered with.

2 MAY 1793. to constitute a part of our relief was, in point of fact, prevented coming forward by the route attempted by Akberpoor; and afterwards, when he attempted another route, the troops still refused to march to Benares.

Shumshire Khan opposes the march of Capt. Gordon.

In point of fact, it is also proved by Captain Gordon, that, when he was marching with 400 sepoys and 80 horse upon the same destination, to assemble at Akberpoor, and to come to our relief at Tanda, the very place of the Begum's jagir, then under the command and government of a person that must have been most in her confidence—I mean Shumshire Khan, the chela, originally the slave, and afterwards the adopted son of Behar Ali Khan, her confidential minister: this Shumshire Khan was the person who governed and who commanded there—what assistance did he afford? My Lords, I have been a good deal surprised to hear the conduct of this person towards Captain Gordon cited as a proof of assistance to the British troops. What was his assistance to the British troops? To dissipate his detachment, and to have his whole baggage delivered up to those who were following him!

The affair at Tanda.

Captain Gordon has been examined here. He and Captain Williams were the only two out of the four that we could produce, to give testimony of what passed where they were. Captain Gordon has stated that he has no doubt upon this subject, any more than Captain Williams, that the Begum did herself authorise what was done, and that what was actually done upon that occasion was the most hostile act that could be committed, and the most detrimental to our affairs. These troops, under the command of Captain Gordon, being much harrassed by the insurgents upon their march, when they arrived at the nala that separated the district where they were from the Begum's jagir, and wanted to cross the river, he saw the boats secured at the opposite bank of the river, to prevent any of his troops crossing. He sends immediate intelligence, having no idea, marching with the Nawab's troops, by his order, and to assist the ally of the Nawab, that any possible obstruction would have been given to his march at that time by the Begum's own officer.

He has sworn that upon that occasion he first, I think, despatched a letter to Shumshire Khan, to apprise him of his situation, and to request boats to be furnished him for the purpose of enabling him to cross the nala. Now, did the letter reach him? Captain Gordon has told your Lordships that he had no doubt of it. Was the assistance given? No,

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my Lords, the boats were not sent. He arrived there between twelve and one o'clock in the day, and was detained till sunset, opposed as he was by all those that were pressing upon him, and when despatch was of great importance: he was delayed all that time for want of the boats. But was it merely passive; was it merely that no assistance was given him to cross the nala? No, my Lords, upon his coming down and presenting himself with his troops to cross, the assistance given by Shumshire Khan upon that occasion was to bring down the najibs, the troops under his command belonging to the Begum, to draw them up in array, to present his guns against the troops commanded by a British officer, and to prevent their coming across, or even sending a messenger to communicate their situation. Was this assistance? Was it not, at that critical moment, the very conduct that the most determined enemy would have pursued?

My Lords, it had the effect. Captain Gordon's detachment of 400 men were all, in point of fact, dispersed. They dispersed, in consequence of a message sent over, that, if they would quit their commander, they should all be saved. The only object was to dissipate the force, as is manifest. That was effected. The detachment of 400 men was actually dispersed by this conduct of Shumshire Khan; the baggage was lost; and that force was prevented from coming to Akberpoor, and from thence proceeding to the assistance of the British nation. Here, then, is an act committed by an officer in high trust and command under the Begums—a direct prevention of succours coming to our support!

Evidence of Capt. Williams and Capt. Gordon.

My Lords, the evidence upon this subject that I have alluded to—as I wish always that your Lordships may follow me with the proof—the testimony of Captain Williams, your Lordships will find is in the printed Evidence, page 1922; the evidence of Captain Gordon is in the printed Evidence, page 1909. After Captain Gordon and his troops had been prevented all the day from crossing the nala, after the object had been answered by dispersing his detachment, at the close of the day, here is the assistance boasted of! Mr. Scott, an English gentleman who had a manufactory at Tanda, and who had applied for permission to send his boat, when it would have been of importance to save the detachment, but was not permitted to send it till the detachment was lost—at the close of the day, Mr. Scott's gumashta obtained permission to send a boat to fetch over

Mr. Scott permitted to receive Capt. Gordon.

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Captain Gordon. Captain Gordon was immediately carried to Mr. Scott's factory at Tanda. He remained there for ten or twelve days, in a state of very considerable danger—threatened, as he has stated to your Lordships, with continual attack, applying repeatedly to Shumshire Khan for assistance, which never was afforded to him; and though, throughout the whole of that period, as he has told your Lordships, there was nothing to prevent his being extricated from the disagreeable situation in which he was, and being brought, as he ultimately was, to Fyzabad in safety, yet, during all that time, when the fate of the war hung doubtful, was he kept in Mr. Scott's manufactory, and in that state of danger, unassisted and without being brought to Fyzabad.

Assistance refused by Shumshire Khan.

Capt. Gordon marches under escort of the Begum.

My Lords, all these acts are to be done away entirely with respect to Captain Gordon; and, truly, your Lordships are to believe that the Begums were friendly to the English power, because, about the 18th or 19th of September, an escort was sent to bring Captain Gordon to Fyzabad, and because Captain Gordon wrote complimentary letters acknowledging that favour and assistance; but, at the same time, having no doubt of that which nobody that reads the history of the country attentively can entertain a doubt of—the obvious policy of that conduct!

Policy of the Begum in affording aid to Capt. Gordon.

My Lords, if the Begums had intended ever so ill against us, yet, while affairs were resting at all doubtful, but more especially at that period when the tide was beginning to turn in favour of the British forces, when, upon the 3d of September, an important victory had been obtained at Pateeta, besides the advantage which we had gained on the 27th of August, which I have stated—my Lords, after that victory had been obtained and guns taken from the enemy—which is a circumstance of great importance in India, for, though a bloody fought battle, it was a victory acknowledged and clear, and had its effects upon the public mind; besides that, Major Crabb's detachment, which was ordered upon the 31st of August, had, upon the 10th of September, I think, arrived, as appears by the printed Evidence, page 124; upon the 13th of September Major Roberts, with his regiment and a lac in silver, arrived from Lucknow; upon the 13th of September Major Crawford arrived from Dinagepore;—when the troops were coming to the assistance of Mr. Hastings, undoubtedly it was a time then for them to act with some degree of caution; not to act too openly and too manifestly, so as to preclude all hope of their being received

Successes of the British.

They influence the conduct of the Begum.

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into favour. It certainly became them at that period to endeavour, if they could, to be of some little benefit or service to the British officer, the taking away of whose life—a single officer's—could add little benefit to Cheyt Sing's cause. Was it not the most natural conduct in the world to preserve him, in a state in which he might be even then fairly as a hostage; where, if affairs had taken a contrary turn, it was easy then to have executed any purpose or any wish respecting Captain Gordon, during any of that intermediate period? But, surely, that one instance, considering the time and circumstances under which it was done, can weigh nothing against the strong palpable acts done at an earlier and more critical period of the war?

Capt. Gordon's report sent in previously to the pretended plot.

My Lords, this circumstance was communicated instantly. It happened upon the 7th of September: intelligence was given of it upon the 8th by Captain Gordon to his superior officer, relating the circumstances exactly as he has done here. My Lords, the plot and the fiction and the conspiracy are supposed to have been formed upon the 15th of November. Captain Gordon related the event upon the 8th of September. He stated the persons and referred it to its proper cause. Where then is the idea of this posthumous fiction that is made upon this 15th of November, when it appears plain, upon the documents before your Lordships, that the officer to whom this happened, at a time when it is not possible to suppose he could have any motive for misrepresenting what passed, has, in his letter of the 8th of September to his superior officer, represented the opposition that had been given to him? That your Lordships will find upon the printed Evidence, page 256.

Merit claimed by the Begum.

My Lords, I am aware that the honourable Managers have stated that the Begum herself claimed great merit for the assistance given to Captain Gordon, and referred to Captain Gordon upon the subject. When that was stated, we did imagine that Captain Gordon, who had come from a distance for the purpose of being examined as a witness on the subject, who was stated to be referred to by the persons on behalf of whom the charge is made—we did imagine, on the part of the prosecutors who are to make out this case of plot and fiction and conspiracy, that they would have called to your Lordships' bar the witness who could be most competent to speak upon the subject. Captain Gordon was in court, but Captain Gordon was not called on the part of the

Capt. Gordon and Capt. Williams witnesses for the Defence.

2 May 1793. prosecution. Captain Williams, the other officer, was here. Captain Williams was not called on the part of the prosecution. Those witnesses who were upon the spot, who best knew what actually passed, are not called on the part of the prosecution to prove their case, but they are called on the part of the Defendant merely to refute that assertion.

Postponement of the cross-examination of Capt. Gordon desired by the Managers.

My Lords, when Captain Gordon was called here on the part of the Defendant, Captain Gordon was submitted to a cross-examination for a considerable period of time. At the close of that cross-examination, when the event of it had been, as all cross-examinations have been, only to strengthen the case of the Defendant, when that was the result, a singular application was made to your Lordships for a postponement to a future day, inasmuch as there had been only two honourable Managers engaged in his cross-examination for one day, and inasmuch as upon three other witnesses they had exhausted seven days in the cross-examination:—I mean, Major Osborne, Mr. Markham and Captain Williams. It was, to be sure, a very natural application to be preferred to your Lordships, respecting a witness whose testimony they had been in possession of for only ten years, that they should prefer a request to your Lordships, after having employed one day in his cross-examination by two of the honourable Managers, to try what another day would produce—a more auspicious, a more propitious, day—to try what new questions could be suggested or thought of, at a subsequent day, to draw out some new testimony—some hearsay of a hearsay—that might operate to the prejudice of the Defendant, or that might tend to support the cause of the prosecution! But, in the result, that most singular and novel application in a court of justice did not meet with your Lordships' approbation. He was examined and cross-examined. His evidence stands firm; and that unimpeached witness has positively sworn to facts, which facts alone substantiate hostile conduct on the part of the Begums.

Testimony of Major Macdonald.

My Lords, what is the account given by another officer upon this same point of succours being sent to us, at this critical period of time? I mean the testimony of Major Macdonald. Major Macdonald is proved to be now in India, and whose testimony, therefore, we could not have; but we have his testimony adduced by the honourable Managers themselves—adduced by them under that head as

a part of the affidavits, under one of the titles that I have stated to your Lordships of proving the reverse of any assistance afforded by the Begums to Cheyt Sing, and of actual assistance being offered to us. I find, in page 663, the honourable Managers, under the title that I have stated, acquainted the House that, "having submitted to them evidence," and so on, "they should next proceed to prove that the Begums never gave the least assistance to Cheyt Sing." I observe, after reading an extract from the Defence, and an extract from the Appendix to the Benares Narrative, the honourable Managers say "they shall next proceed to read the whole of the ninth, tenth and eleventh, parcels of affidavits, in the Appendix to the Benares Narrative." This evidence, therefore, which in part is relied upon by them, wherever it makes to substantiate any proposition on the part of the prosecution—this constitutes a part of the evidence adduced on the part of the prosecution. 2 May 1793.

With respect to these affidavits, I certainly do not mean to state to your Lordships that they, on that account, ought to be received as affidavits in evidence upon the present occasion. The purpose for which they were made at the time has been stated by the person who advised it. Sir Elijah Impey has stated to your Lordships that, if there was any thing improper in the measure, the impropriety was his. He suggested it. For what purpose did he suggest it? Purely to substantiate facts which happened at that time relative to the Benares insurrection, for the purpose of satisfying the minds of people at home upon the subject. He thought that his presence would be considered as giving some degree of sanction, and that the addition of an oath would at least make the narrative of British officers there not of less weight on that account, if they related what they saw, heard and observed, under that sanction; that it would be some additional satisfaction to those who were to judge upon the subject in this country. But thus we may consider it, surely, as a narrative of events given by the officers upon the spot, relating what passed under their own eyes. Value of the affidavits.

My Lords, the account given by Major Macdonald is in page 258 of the printed Minutes. He states that he had been stationed at Amorha—your Lordships will also find it in page 684—to assist the amil in collecting the Company's tankhwah. Now, Amorha is a place very near—within, I think, about twelve or fourteen miles of—Fyzabad. He had, Statement of Major Macdonald.

2 MAY 1793. therefore, been for more than a twelvemonth in the neighbourhood of the place where the Begums lived. He was stationed at Amorha. He states the circumstances:—In the first place, that he had been detached by Colonel Hannay, in February, 1780, with a body of horse and foot, in pursuit of Zalim Sing; that he could not come up with him; that Zalim Sing was received in the most friendly manner in the zamindary of Cheyt Sing, and protection promised him at the time; that he, the deponent, "sent proper spies to watch the motions of Raja Zalim Sing, and returned himself with the troops to his station at Amorha; that the deponent learned, by the spies left about Zalim Sing, that he was allowed to reside openly under the protection of Cheyt Sing."

He then states, that, on the 20th of August—which your Lordships observe is only four days after the insurrection of Cheyt Sing—he was informed that "Cheyt Sing had, after putting to death three English officers and 250 sepoys, fled from Benares, and openly set up the standard of rebellion, inviting all persons who could procure arms to repair to him, and by fighting under his banner extirpate the Fringies"—the term given to the English. He says:—

Reports at Fyzabad.

"The country of the daring rebel, Cheyt Sing, and the city of Fyzabad, seem to the deponent the most likely places to furnish the wished intelligence. In the latter place, Fyzabad, it was reported, first, that the honourable Warren Hastings had been massacred at Benares; then that he had been cut off on his way to Chunar: at last, it was said that the honourable Governor General was in Chunargur, but must soon fall into the hands of the Benares rebel, as no relief could possibly reach the place in time to save it; and that shortly the destruction of every Englishman in those parts would be effected."

He states that—

"His excellency the Vizier repaired to Sultanpoor about this time, which prevented the rebel Zalim Sing and Pertipal Sing, whom he mentioned, from quitting the jungle, but they were busy in making the necessary preparations, by raising men with the money said to be sent by Cheyt Sing in Fyzabad. The khajas"—that is the eunuchs, the ministers—"of the Vizier's grandmother, as well as those of the Bow Begum, were raising men under various pretences, and making every preparation that might be necessary either for offensive or defensive war. During the time the Nabob lay encamped at Sultanpoor, the deponent's people were insulted and ill-used in Fyzabad by the peons, sepoys, and other servants of Jewar Ali Khan and the two Begums, as were all who made use of the English name, or were supposed to have any connection of the kind. But, on its being known there that his excellency had moved towards Chunar, no one who was a servant of the

Preparations for war.

Ill treatment of the English.

English could get admittance into the city but by stealth, or in disguise. Even the dak, that is, the post, from Lucknow, was not allowed to pass through as formerly, but obliged to make a large circuit,—and the harkaras put on different appearances, to pass unnoticed to Amora." 2 MAY 1793.

He states also, that the persons appeared to have several frequent meetings, and seemed big with some great plan; that, on the 29th of August, having received orders from Colonel Hannay informing him that his excellency the Nawab had written to him—Colonel Hannay—to join him immediately with 1,000 sepoys, 4 guns, and 500 horse, a force was collected for that purpose; that, soon after that was made public, Cheyt Sing's name was in every body's mouth. He says, that 400 sepoys of the deponent's battalion were ordered for this service, and also his battalion guns; that no sooner was this made public than every raja in the country declared for him; that the deponent endeavoured to get some najibs to supply the place of the troops called away, but all in vain.

Col. Hannay is ordered to join the Nawab.

"Every attempt was rendered abortive by the machinations of the khajas belonging to the two Begums at Fyzabad, and every soul in that city seemed, from his conduct and conversation, to look upon the English as on the very eve of extermination, forbidding any one to serve the Fringies, but to repair to Cheyt Sing and Saadat Ali. Nay, every method and way were tried to seduce the sepoys from the deponent's battalion; which, however, did not succeed while remaining under his eye, but had the desired effect upon the nujeeb and sebundy."

Opposition by emissaries of the Begums.

He then states that:—

"On the 8th of September, it broke out in all parts. All our posts were driven into camp: the roads in an instant secured by armed parties; harkaras murdered; sepoys attacked; and the intended destruction of every Englishman openly declared, not only throughout the parganas, towns and villages, but even in the city of Fyzabad. To such length was it carried by the people of Jewar Ali Khan and the khajahs belonging to the Begums, that the women of the deponent's camp that were sent across the Ghogra to be out of the way of danger, being obnoxious from the connection, were refused that protection which the sex in every country meets with, but particularly in Hindostan claims as a right. He says that, from the above date, he was confined to the limits of his camp, nor had he any road open but that to Rye Ghaut, opposite Oude, at which place, he says, Colonel Hannay then lay, with a very small force, while the country around him, also the city of Fyzabad, seemed ready to commence hostilities."

Removal of the women from the British camp.

My Lords, he then states the circumstances of the attack made upon him by the rebel forces of Zalim Sing and the

Attack on Major Macdonald by Zalim Sing.

2 May 1793. others. He states the fact of actual assistance afforded to those rebel troops to attack the British officers—afforded them by boats actually supplied to those persons. He says, that the rest of his people "informed him that Raja Zalim Sing had produced a paper which he, the Raja, said was a sunnud from the Nawab restoring him to his zemindary." This man said, to give himself authority, that "he had the Nawab's directions to drive the Fringies out of his districts; that he only waited for the site,"—that is, the lucky hour—"boats being already provided from Fyzabad," which the deponent knew absolutely to be the case.

The rebels furnished with boats from Fyzabad.

Now, my Lords, that circumstance is a very material confirmation of the conduct represented by Captain Gordon at Tanda. Boats are prevented being furnished to the troops that are marching to our protection, all the day, till the detachment is lost. But, at this place, when the rebel force is marching to attack a British officer, then Major Macdonald says he knew the fact, that boats actually were furnished from Fyzabad, to enable this rebel force to attack Major Macdonald. And, my Lords, that circumstance is additionally proved by the conduct of the Begums with respect to other persons. A similar conduct [was pursued] to prevent the march of the troops in all places, at this period of time and even afterwards, by preventing boats being furnished, exactly in the same way as was done towards Captain Gordon. For that I refer your Lordships to the printed Evidence, page 1927, where Captain Williams, upon the 7th or 8th of September, received intelligence that all the boats were destroyed that day on which Captain Gordon was prevented marching. Captain Naylor relates a similar conduct observed by the Begum with respect to him, at a subsequent period of time—printed Evidence, page 723; and also with respect to Colonel Hannay, which is described in his letter of the 8th of September.

Deponent compelled to abandon his camp.

My Lords, [Major Macdonald] says that, in the city of Fyzabad, the same language prevailed as to the money and stoppage of the tankhwah, during the night of the 10th of September; and then he represents an attack made upon him by Zalim Sing in consequence of this, which happened, I think, upon the 10th or 11th of September. He was attacked. Part of his troops having marched before, to join Colonel Hannay, with a part of his guns, he had not a sufficient force to oppose Zalim Sing. He marched out of his camp on the 10th, just

in time enough to save the greatest part of his detachment: some few persons left behind were attacked and destroyed. Immediately upon that event happening, as soon as Zalim Sing had taken possession of his camp, as soon as the event was known—how was it received by those that were friendly to the English? 2 MAY 1793.

"As soon as it was known at Fyzabad that Zalim Sing was in possession of Amora, the whole city was in an uproar of joy; and the deponent heard the report and saw the smoke of the guns that were discharged at Fyzabad, he believes, on the occasion." Rejoicings at Fyzabad.

My Lords, that circumstance is proved by Captain Williams—printed Evidence, page 1930. He then states that:— Complicity of the Begums.

"He believed the reports, as before related, at that time, and still is of opinion that the threats therein contained were intended to be carried into execution had the league been successful; nor did he then, or even at this moment, doubt but that the Begums at Fyzabad and their khajas were in a league with Cheyt Sing, the Benares rebel; and the deponent is of opinion that the whole of the disturbances that happened in the parts where he resided took their rise from the rebellion of Cheyt Sing. He is of opinion that it would not have extended itself so wide, in the short time it really did, had it not been a matter preconcerted, and brought to light by mere chance ere properly ripe for execution.

He then states the circumstance of the rebellion having been meditated for some years; that he was informed it was absolutely debated in the year 1779, and prevented only by the voice of a person about the Raja. Here then is the opinion of a British officer, stationed at Amorha for a year and a quarter, with every opportunity to observe the conduct of the Begum and her sentiments, and describing circumstances that passed within his own knowledge and observation, which he relates under the sanction of an oath, concluding it to be his firm opinion that the Begums at Fyzabad and their khajas were in a league with Cheyt Sing!

So your Lordships have here the testimony of three out of the four officers that were stationed in the country. The testimony of the fourth, which is Colonel Hannay, goes still more pointedly to the conduct of the Begums at Fyzabad. And here I shall beg to refer your Lordships to the testimony of Major Gilpin, a witness produced on the part of the prosecution, who states that, at Fyzabad, all the persons were in the interest of the Begums; that it was the place of their residence; that it had long been the place where she had exercised her power, where she had considerable influence Evidence of Major Gilpin.

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over all the people of that city, and where consequently they would naturally take their sentiments and their conduct from what was conformable to the wishes of the Begums. I referred your Lordships to the testimony of Major Gilpin, yesterday, pages 873 and 904. The particular place, I believe, where your Lordships will most find it will be in the printed Evidence, page 905.

Evidence of Col. Hannay.

The evidence of Colonel Hannay upon the subject is in the printed Evidence, page 256. He states—

Ordered to march to the assistance of Mr. Hastings.

"That, in obedience to orders he received from his excellency the Vizier for the purpose, on the 28th August, 1781, he issued orders for forming a detachment, consisting of 1,000 sepoys, 4 guns, and 5,000 horse"—

I rather think that must be a mistake for 500 horse, for it is corrected in another place—

His troops tampered with.

"to assemble at Akberpoor; that eight companies of sepoys, two guns, and the remainder of the horse, were ordered to cross at Fyzabad, and encamp on the Jumna until the arrival of the deponent, who was from thence to march to Akberpoor, the appointed rendezvous of the detachment; that he arrived at Fyzabad in the evening of the 7th of September, with the intention of pursuing his march to Akberpoor the next morning. He says that he was detained from the horsemen having been seduced into the town, where they were tampered with by the servants and agents of the Begums to decline proceeding further with him; that the subahdars of the two companies of sepoys represented to him that guards were placed—said, by the authority of the Begums—to prevent sepoys or any one connected with the English from entering the town; and, upon inquiry, it appeared that such representation was true.

Troops raised in Fyzabad for Cheyt Sing.

"That the deponent learned from various, and what he deemed information to be depended on, that the agents of the Rajah Cheyt Sing were publicly suffered to raise troops in Fyzabad, and that the eunuchs of both Begums encouraged the people to enter into his service—particularly Jewar Ali Khan, who was represented to have gone into the Chouk for this purpose; that the deponent was credibly informed that, two or three days before his arrival at Fyzabad, a man named Sheakh Khan had marched from thence in order to join Rajah Cheyt Sing, with about 1,000 horse and foot, and that several other detachments had before proceeded from thence with the same design. These transactions were of so public notoriety, and so generally believed, that the deponent deemed it his duty to represent their impropriety to the Bow Begum,"—there is a direct representation to them by the British officer on the spot!—"but could obtain no answer."

Remonstrance to the Bow Begum.

He then states, that, on the evening of the 8th of September, he received a letter from Captain Gordon, which he sets forth in his affidavit.

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There is a further affidavit, made by the same person, in page 266, which relates a very striking circumstance that happened at Fyzabad, and which shows the obstruction that was everywhere given, and the endeavour that was made by the Begums to draw off the troops serving under British officers from their duty, at that period. He states that,—

The troops corrupted by the Begum.

"Being encamped at Ryegunge, near Fyzabad, employed in transporting the said troops across the river Ghogra, in order to act against the insurgents to the northward of the river, in the evening he received intimation from a person living in the zanana that the Bow Begum, grandmother to the Nabob Vizier, Asoff-ud-Dowla, had, through her agents, prevailed upon the principal jamadar of horse to engage to detach himself from the said deponent and to abandon him; and further warning the said deponent to attend to his own personal safety, as there was an intention of detaining him at Fyzabad."

He says, my Lords, that,—

"In consequence of this intimation, which was given to him in the presence of Lieutenant Charles Middleton to whom he communicated it, during the whole course of that day, the 10th of September, he had not been able to prevail on any of the horsemen to cross the river; that that was a matter which he could not until then account for, but which served to impress him so strongly with a belief of the truth of the information he had received, that he sent for the principal jamadar of horse, circumstantially communicated the said information to him, and, as forcibly as he was able, stated to him the treachery, disgrace and infamy, inseparable from so unmanly a behaviour."

Now, what is the answer of the jamadar of horse? He says:—

"He appeared much affected at the conversation, and acknowledged that the information was true in every circumstance, except that of his having acceded to the proposals that were made to him, which, he declared, he had rejected; but said that they had been also made to the other jemadars of horse by the agents of both the Begums; and the truth of this assertion was afterwards affirmed to the deponent by two of the said jemadars, and several of the inferior officers and private horsemen."

That is another direct fact proved of the act of the Begums:—first, by the communication with a person about them; and, afterwards, by charging the persons with the attempt that had been made upon them, and [obtaining] the acknowledgment of all the parties upon the subject that the fact was true.

There is, too, more intelligence coming from the same person, Colonel Hannay, communicated in his various letters upon the subject, which were transmitted to Mr. Hastings at

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Chunar. They are set forth likewise in a part of the evidence given by the prosecutors. In page 182, a letter is quoted of the 8th of September, from Fyzabad—above two months, your Lordships' see, before it was supposed this fiction was devised by Mr. Hastings. In this letter, Colonel Hannay says that the whole country of Ghogra was in arms and rebellion:—

Further particulars of the rebellion communicated by Col. Hannay.

"This town of Fyzabad has more the appearance of belonging to Cheit Sing than the Vizier. The Begums have placed guards to prevent any of my people going to the bazar in it. Within these few days, Sheakh Khan, with near 1,000 horse and foot, marched from hence to Benares. They were raised here: and I must confess that, for my own part, I have no doubt but Jewar Ali Khan and Behar Ali Khan, through their agents, have stirred up all the disturbances which extend from hence to Powcy and Azeemgur. I have sent Hoolas Roi to the Begum, to inquire into the reason of my people being prevented from going into the town, Cheit Sing's being suffered to raise troops here; and why her servants attempted to prevent my getting boats to transport the Company's guns and horse from Amora."

This is another proof of direct intimation given to the Begums by the British nation. Colonel Hannay, in his affidavit, has stated the result, by saying that he could receive no answer; but your Lordships will find, in another letter, at a subsequent period, he states levies being made in the town for Cheyt Sing and from thence sent to him. He states in a subsequent letter, which is in page 183, without date, but received immediately after the above:—

Certificates issued by Cheyt Sing to the zamindars, etc.

Extent of the insurrection.

"I have before told you how violently the Begum's people inflamethe present disturbances; and, in addition to this, the principal zemindars and rajahs have, all, certificates under the seal of Cheit Sing that he will supply them with whatever money they require. It is the general belief of every man in this part of the country that the conduct I have related is a concerted plan for the extirpation of the English. What may be the situation of the rest of the Nabob's dominions I know not, but it is most certain that, from Goonda to Manjee, and from Fyzabad to the Benares district, and across from the Gogra to the Ganges, the country is in the utmost ferment. I hope to God a sufficient force is ordered for the reduction of Cheit Sing, for the people who are daily sent to him, horse and foot, from Fyzabad and the seat of rebellion I have before named, is very great.

In a letter of the 13th of September, he says:—

Inability of Col. Hannay to proceed to the relief of Mr. Hastings.

"It is impossible, in the general insurrection which now reigns almost universally, for me to get the force together the Nabob demanded, or to force my way to you with a less. The greatest anarchy prevails. The present insurrection is said, and believed to be, with an intention to expel the English. The Begums have almost themselves recruited for him."

He says, in another letter of the 18th :— 2 MAY 1793.

"If you meet with a check at Benares, every man in the country is ready to fall upon your scattered parties. The state of the Vizier's dominions is in general beyond description. The insurrection is not partial, but generally spread throughout the whole; though it rages most violently in the mahals of Sultanpore, the mahals from Fyzabad to the Benares country. I have already repeatedly informed you of the disposition of those in power in Fyzabad, which has, in fact, been one of the great sources of the insurrection, and the place of all others in the Vizier's dominions which has supplied Cheit Sing with the greatest number of troops. The old Begum does in the most open and violent manner support Cheit Sing's rebellion and the insurrection, and the Nabob's mother's accursed eunuchs are not less industrious than those of the Barra Begum. Capital examples made of Jewar Ali Khan and Behar Ali Khan would, I am persuaded, have the very best effect. I have already written you so fully my reasons of being convinced of the treachery practised at Fyzabad, and which I am afraid extends to your camp, that I need say no more on the subject."

Disordered state of the Wazir's dominions.

Open support of the rebellion by the Begums.

Now, my Lords, here are the letters written at the time by Colonel Hannay from Fyzabad, the very place inhabited by the Begums, where he had the very best means of knowing any thing upon the subject. I should have referred your Lordships likewise to a private letter, written also at the same period of time, dated, I believe, the 10th of September, by Major Macdonald, and manifestly written in the style of familiar correspondence, in which he refers to the same circumstance. It is written in a state of great anxiety and uneasiness. He is very apprehensive for his own personal safety and that of all the rest. It begins with a familiar appellation—"My Dear Nat:"—the whole of it is evidently a letter not written for public view, and in that he mentions the opinion that he entertained of the Begums. It is in the printed Evidence, page 211 :—

Confirmatory letter of Major Macdonald.

"There is certainly villainy abroad."

He states that—

"The Begums gave the same advice and promise of money. This Cheit Sing has already disbursed to a great amount. This plan was the cause of Gordon's disaster,—being attacked in the Nabob's country while he thought himself amongst friends; also it is the public talk of Fyzabad where my people are daily insulted."

To show the situation in which he was, he says :—

"A very few days will determine it one way or other with regard to us rulers over these. You may think me humming, but it is more than odds we never, never, meet again :—God prosper you!"

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Concurrence of evidence, prior to pretended plot of Mr. Hastings against the Begums.

Now, to show that, undoubtedly, at that period of time—the 9th of September, 1781—such was the impression upon all the officers respecting the Begums, two months before the fiction and invention of Mr. Hastings, they, in all their public correspondence, and in all their private letters, give accounts of what they actually saw; each in his separate station referring it to the same cause—the conduct of the Begums at Fyzabad.

My Lords, it does not rest here, for there are a variety of circumstances disclosed, all tending clearly to corroborate the same account of the conduct observed by the Begums. Two circumstances are stated and have been proved upon oath by Captain Williams, which show manifestly that attempts had been made in the country, on the part of the Begums, to prevent succours coming from that country to the relief of the English.

Alleged cause of the insurrection.

Your Lordships have heard a great length of cross-examination into the supposed cause—the only cause—of the insurrections at Baraitch and Goruckpore;—that is, an aversion on the part of the insurgents to the English power, and to the conduct of Colonel Hannay in that district. My Lords, upon all that subject I certainly will not follow the prosecutors in a detail of evidence respecting it, for this reason; because, in the first place, it is impossible to make Mr. Hastings responsible for the conduct of Colonel Hannay, even if it were what is stated; in the next place, it is not in charge upon the present occasion, and therefore I will not go into that subject. But, if I were to admit, for the sake of argument, that the conduct of Colonel Hannay had been ever so oppressive in the country—if I were to admit, what is another opinion, taken up to prove the cause of the insurrection in that country, that the zamindars themselves were persons always from an early period disposed to revolt—persons who had, for a long period of time before Colonel Hannay came into the country, kept that country in a state of tumult and disorder—which, at the same time, if it goes in any degree to exonerate the Begums, also operates powerfully to exonerate Colonel Hannay from the charges made against him, and to show that a good deal of rigour and severity on the part of Colonel Hannay might be necessary towards persons so conducting themselves, who then uniformly kept the country in a state of tumult and disorder;—yet let both

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the causes, if you please, be operating at the time to dispose the minds of the people to revolt, will then the existence of two causes negative the existence of a third? When you are to show that there were two other causes that might operate upon the minds of the people, might there not be also this additional one, that, at that critical period of the war, when Cheyt Sing's rebellion had raised the hope of those who were adverse to the British power—a hope of being able to complete the overthrow of it—whatever their motives, whatever their wishes were, whatever their disposition upon the subject was, might they not at that period be easily open to the instigation of the Begums, co-operating, if you please, with their own previous wishes on the subject, and lend a willing ear to overtures, made in the country, to co-operate with Cheyt Sing in the general plan against the English? And therefore I conceive it would have been material for the prosecutors, not merely to set up two other causes — each of them not very consistent with itself—but, when they have proved these two to have existed, to go further and to negative a third; because, if they prove twenty causes operating and do not disprove the other, it does not affect the question of the existence of the present.

The Begums not to be acquitted on the hypothesis of Col. Hannay's cruelty.

But, I think, when they attempt to account for what passed by referring it all to the cruelty of Colonel Hannay, or to the previous disposition to revolt on the part of the rajas in that country, when they do that, I think, the cause is not co-extensive with the effect; because I should be glad to ask, when they are accounting for what actually passed, will either of the two causes that they state account for the conduct of those who, if Colonel Hannay was guilty of rigour and severity to the inhabitants, were themselves the instruments that practised that rigour and severity? What was it that made the troops of Colonel Hannay rebel? What made them mutiny? What made them unite at that time in disposition against the English? Did Colonel Hannay oppress them? I conceive some other cause must be found out for what should operate upon them at the time, why they should be disposed to rise up against the officers, and to refuse to act against the rebel chief. Then I ask, whether I must not look out for some other cause than is assigned by them: and, if I introduce that other cause, in this instance applied to the troops serving under British officers, does it not afford a very fair argument that the same cause did, in a

Insufficiency of causes assigned for the rebellion by the prosecutors.

2 May 1793. degree, operate all the rest of the effects that were actually experienced at the time?

I say that that is not only a probable solution, but is a solution given at the time by the officer who commanded the troops, and who referred it to that cause. I have stated the circumstances that lead us to impute it to that cause; but they do not stop there. Captain Williams, upon being asked his reasons for forming that opinion, says:—

Testimony of Capt. Williams.

"Wherever I went, I collected circumstances that tended to confirm me in the belief of it. It was reported to me, at first, by my agent, and afterwards upon my march. The first person I came to in the country of consequence, that had not taken part against us—Bridge Bookum—who came with two hundred men—"

Overtures made by the Begums to Bridge Bookum.

What is the account that he gives immediately to Captain Williams? That the Begums had sent and made overtures to him, who was one of the rajas of the country, to act against the English. Then I say, if I prove in this instance, by the declarations of Bridge Bookum to Captain Williams, that the Begums attempted to practise upon him, is it not a fair argument to say, with respect to the other rajas who were acting against us at the same time, that probably similar attempts had been made from the same quarter upon them?

To the Rani of Bansi.

But it does not stop there. There is another person, and the only person of consequence in the country that did not co-operate against us—the Rani of Bansi. She gives the same account to Captain Williams. He has sworn that he received from her an account that overtures had been made to her likewise of a similar nature, desiring her to act against the English.

My Lords, then here is proved the positive existence of this cause operating, by the declaration of the people themselves, if you believe the testimony of Captain Williams that such declarations were actually made to him at the time: and, unless you believe that Bridge Bookum and the Rani of Bansi were in the plot at the time, that they were concerned in the conspiracy against the Begums, or that they could not know who it was that applied to them, surely this is direct evidence that the Begums did apply to the people of consequence in that country, and were actually promoting the disturbances that operated so much to the prejudice of the British troops.

But it does not stop even there. There are other strong

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Capt. Williams' orderly is put to death in Fyzabad.

circumstances related by other persons. Captain Williams has stated that, acting upon the confirmed belief that he could not venture to pass through Fyzabad, he made a circuit of fifty miles to avoid it. Unfortunately, his orderly sepoy and his servant did not use the same precaution. They passed, as the nearest way, through Fyzabad. What was the consequence? That the sepoy, a soldier belonging to a detachment under a British officer, was, in Fyzabad—that place which was under the government of the Begum, that place which is stated to be at the devotion of the Begum,—in that place, at that time, was that sepoy put to death! In that place, at that time, was the servant of Captain Williams stripped and plundered, and escaped only to relate the fate of his comrade to Captain Williams!

Levy of troops for the service of Cheyt Sing.

It does not stop there; but five other officers, I think, who were absent upon leave, were under the necessity of disguising themselves in that place; and they relate what they actually saw, when they were in Fyzabad, of the active conduct of the Begum's agents, Jewar Ali Khan and Behar Ali Khan, in levying troops for Cheyt Sing. Nor is this all the proof of this active assistance afforded by the Begums. There is another circumstance, a very strong one, that is related by Captain Williams—that, when he was upon his march, an intercepted letter was brought to him under the hand and seal of Jewar Ali Khan, addressed to Ajeet Sing, one of the rebels acting against us at the time. One of your Lordships, I believe, put the question. It is the custom in India, that the seal upon the face of a letter frequently bears the mark of the person from whom it comes. It was a letter intercepted at a ferry. He describes that he saw it; he had read it. He gave your Lordships an account of it. It is a letter written by Jewar Ali Khan, that proves the fact who it was that was instigating him to act against us at that time. He was inciting Ajeet Sing, who was at that time actually engaged against us, to act to the detriment of the English forces, and referring him to a subahdar in Major Macdonald's detachment—a person who actually had been found unfaithful; and which is another additional corroboration in support of that letter.

Intercepted correspondence.

I remember some observations made with respect to a letter that was actually produced. On one day it was a letter that made very much for the prosecution, and, upon the next day, it ought not to be received in evidence at all; but they resisted it to prevent your Lordships' Minutes

2 May 1793. having anything upon them that is not legal evidence; and therefore they did, from pure public principle, object to a letter which, if received, would make extremely for the prosecution. That letter was produced by us, because it had been produced upon former occasions, and observations would probably have been made if it was not produced at the present. We stated at the time that we did not mean to represent that, upon the face of it, it was perfectly unequivocal, but that, upon the whole, there were circumstances attending the letter, which by mere accident had been preserved when the rest had been destroyed, from the cause that is stated by Captain Williams in his evidence—that there was one circumstance in it that did tend to create some belief that that letter was addressed by somebody friendly to the Begums, and addressed to the Begums or their ministers at Fyzabad. I am content perfectly to reject the letter altogether. I am content if they can find anything in the letter to make for the prosecution. I want not the aid of that evidence; but I will only state one circumstance upon that letter, and leave it for your Lordships' consideration—that there does appear upon it that a reward is directed to be given to this very man, Ajeet Sing, who was at that time acting hostilely against us, and to whom that other intercepted letter was actually addressed. I will leave that one circumstance with your Lordships; not meaning now to say that the letter ought to have any very great weight, after the testimony given by Captain Williams respecting it, but I only state that circumstance for your consideration. Your Lordships will give it the weight it deserves.

My Lords, it does not rest here. There is another person who has represented another very important fact, which shows how friendly the Begums were, and how active in favour of the English. Captain Williams has sworn that an officer related to him that he had actually intercepted a parwana, under the seal of the Begums, offering rewards for the heads of British officers and soldiers at that time in that country! I will beg your Lordships to advert to that evidence: it is in page 1930. The letter that I before stated to be intercepted is in page 1929. The other document I am now giving the House is in the same page:—

Rewards offered for the heads of British soldiers.

"Did you receive any official reports from Bidjoo Sing, a subahdar under your command?"—"Bidjoo Sing wrote me a letter stating that he had seen a perwannah, under the Begum's seal, offering a reward of

a thousand rupees for the head of a British officer, a hundred rupees for a native officer, and ten rupees for a sepoy." 2 MAY 1793.

Recapitulation.

Now, as opposed to the evidence that is relied upon on the part of the prosecution, of the actual assistance afforded to Captain Gordon at a later period, when affairs were turned in our favour, I will adduce this evidence, to show what sort of assistance was given to British officers and British soldiers at that critical period of the war, and in what way they offered those rewards which were to operate to our destruction. This is strongly confirmed by all the evidence at the time, to which I shall only beg to refer your Lordships generally. And I would beg to ask, whether the honourable Managers are better acquainted with the cause of an insurrection than the insurgents themselves? What is their cry? What is their language at the time? Is not the war-whoop everywhere for the Begums, Cheyt Sing, and Saadat Ali? Do they not uniformly declare in every place that they act by orders from the Begums? I have already referred your Lordships to the various places where they, at the same time, from one end of the country to the other, are all professing to act by orders received from the Begums.

I would then ask your Lordships how it could possibly happen that, in so many different places at a hundred miles distance, it should enter into the heads of so many different persons, all, by pure instinct, at one and the same time, to invent the same idea—that orders were come from the Begums and that they were acting in consequence of them? Is it credible? Are your Lordships to believe it possible that that could have happened? or are you not to take the plain and natural account that is given by all the officers upon the spot, referring it to actual emissaries sent, to actual orders given, to letters which were intercepted, which profess to be heard of in every quarter and to be acted upon with respect to every person? Is not that the plain, natural and obvious, cause? And are we to refer it to those other unnatural causes, and refer it to anything rather than believe that this imputed fiction of Mr. Hastings has no reality?

Discovery of troops from Fyzabad in the army of Cheyt Sing.

My Lords, there is another part of the evidence, confirmatory upon the same subject, which your Lordships have heard by the testimony of three British officers who have been examined at your bar. We have shown your Lordships, by the opinions of all the British officers who were in Oude, [what was thought] respecting the conduct of

2 May 1793. the Begums, and the actual fact of levies of troops made at Fyzabad and sent from that place, to which place an agent of Cheyt Sing had been instantly sent as soon as the rebellion broke out. To complete this evidence and to bring it to a matter of pure, perfect, certainty what is there wanting, but to inquire whether any of these troops that were stated to be sent to Cheyt Sing from Fyzabad—whether any of these troops were actually found in the army of Cheyt Sing?

My Lords, that evidence is completed; and, unless your Lordships will reject the testimony of three respectable British officers who actually speak to the fact, each separately stating what passed under his own eye and observation at Pateeta, your Lordships must come to one or the other of these propositions:—either that they speak what they do not believe to be true; that they are mistaken in what they represent; or that those who stated that to them did not know the facts that they related at the time. Colonel Popham, Captain Birrell and Captain Wade, have all sworn at your Lordships' [bar] that, at Pateeta, they, each of them separately, about the 20th of September, the time when the attack was made upon Pateeta, held a communication with captive prisoners made from Cheyt Sing's army—that made a part of his army—that were taken in battle at that period.

Evidence of Capt. Wade.

The testimony of Captain Wade upon this subject your Lordships will find is in the printed Evidence, page 1793. Captain Wade was asked:—

Battle of Pateeta.

"Were you with Colonel Popham's detachment upon the 20th of September 1781?"—"I was." What was your situation during that attack?"—"I commanded a corps of independent rangers at the battering guard." "Was the battery you are speaking of cannonaded by the enemy?"—"It was attacked from a hill upon our left flank." "Was the party visible that attacked it?"—"The party was not visible. The hill and country immediately about it was thickly covered with wood." "Was any force sent to dislodge the enemy from their then position?"—"A native sepoy officer with a party of sepoys were sent to repel the party who had attacked our battery." "Did they bring in any prisoners?"—"They did." "Were there among the number any persons appearing to be nudjeeves?"—"There was one among them a nudjeeve." "What account did this man give of himself?"—Here is a soldier taken in arms at the attack of Pateeta actually out of Cheyt Sing's forces.—"What account did this man give of himself?"—"That he had been sent from Fyzabad by the Begums with a body of six hundred nudjeeves, to which he belonged; that, previous to their departure from Fyzabad, they had received two rupees in advance from the Begums: that that afternoon he had been detached to make the attack which took place on our battery. I knew the man to be a nudjeeve; the

Information from a captured najib.

uniform of that corps was known to me: I have seen several of them in the Nabob of Oude's dominions. The man was wounded, and from the battery was sent up to Colonel Popham—Major Popham then—who commanded the camp." 2 MAY 1793.

Upon his cross-examination, he was asked a number of questions, which had that effect which most of the cross-examinations have had— Cross-examination of Capt. Wade.

"Whether you know a nudjeeve when you see him?"—"Exceedingly well." "Whether the Nabob of Oude had many nudjeeves in his service?"—"Suja Dowlah had a corps of 4,000 men, as I have heard, of that description—they wore a blue uniform coat"—and so then he describes their uniform. "Whether or no you know, or are sure, that the Nabob of Oude retained no nudjeeves in his service at the time you speak of?"—"I am not." "Whether you have any reason to know, and can positively say, that the Begums entertained any bodies of nudjeeves at all in their service?"

From whence I conclude the honourable Manager who examined this witness to entertain some doubt upon that point, whether the Begums did entertain any body of najibs at the time in the service. The witness said:—

"I supposed, from what the nudjeeve said in my hearing, who had been brought in a prisoner to the battery at Pateta, that they must have had in their service that body of 600 men to which he belonged." "Have you any other reason to believe that the Begums had a body of 600 nudjeeves in their service?"—"I have heard that the Begums did entertain bodies of men." "The question is as to nudjeeves."

So that this examination was with a view of disputing the fact of the Begums having najibs in their service. Now it so happens that for that fact I have the testimony of the Begums themselves; because I observe that, in giving the account of what was done respecting Captain Gordon, I think, in their letter they actually mention having sent najibs to escort him to Fyzabad. I will just refer your Lordships to that evidence: it is in page 699. The passage that I refer to I shall meet with presently. I am persuaded that there is a letter from the Begum, though in the multiplicity of documents we cannot immediately refer to it, in which she herself mentions having sent a body of najibs to escort Captain Gordon to Fyzabad. There, therefore, can be no doubt that she had najibs, though it seemed to be the object of this cross-examination to throw doubt on the fact:— Najibs in the service of the Begums.

"As my friendship for the English was always sincere, I readily complied, and sent some companies of nudjeeves to accompany Captain Gordon and all his effects to Fyzabad."

"In what language did this man tell you that he was employed by the Begums to serve Cheit Sing?"—"He mentioned it in the common language

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of that country—the Moorish language." "When he mentioned that in the common language of the country, what was the conversation that led to it? Did you ask him, or did he voluntarily tell you?"—"Upon this man's being brought into the battery, the people in the battery collected about him to hear what he had to say. I at that time had a groom in my service who had been a nudjeeve, and who always insisted upon wearing the uniform of a nudjeeve. This man's uniform who was brought a prisoner into the battery was one of the circumstances that first induced me to go up to hear what he had to say. Who first asked him the questions I do not recollect: it was not me." "Did he tell, saying he was employed by the Begums, who employed him?"—"He said he was sent by the Begums with a body of 600 nudjeeves, to which he belonged, from Fyzabad; that they received two rupees before they set off to Cheit Sing's assistance." "From whom did they receive the two rupees?"—"His expression, in the Moorish language, was—from the Begums." "Who did he say he received it from, and who gave him authority to serve Cheit Sing?"—"The man's expression in the Moorish language was—I got two rupees from the Begums." "When you examined him so much, why did not you ask him from whose hands he got it, as he could not possibly receive it from the hands of the Begum?"

Declaration by the najib that he was one of a body of 600 men sent by the Begums.

Now, as he could not receive it from the hand of the Begum, I suppose they will not require us to prove he received it from the hand of the Begum.

"I never once thought such a question was necessary; nor did I go to hear any thing the man had to say with respect to the Begums, as a proof of the assistance Cheit Sing had received from them. I was from the previous notoriety of the fact sufficiently convinced of it." "What previous notoriety of the fact?"—"Whenever the extent of Cheit Sing's measures were mentioned, they scarce were ever mentioned by any body without the Begums being a party in them." "Whether any other nudjeeves of this corps of 600 happened to be taken, or were inquired about?"—"I do not understand the question."

Question by a Lord:—

"Whether any other nudjeeve was taken except this man with whom you conversed?"

He says:—

Similar evidence given by a second prisoner.

"The morning the town was stripped, the conversation of the camp ran a good deal upon the pleasantry of another nudjeeve"—

we are indebted to the cross-examination for producing the pleasantry—

"who had received two wounds, and remarked, shortly after he had received them, that he had only received two rupees from the Begums for them." "What became of these two men?" "The last I did not see: the other was sent to the camp." "Do you know what became of him, or whether any inquiry whatever was made after him?"—"After he had given the account of himself, which I have been delivering, he was sent up to the camp to Major Popham." "Do you know what became of him?"—"He was sent from the battery up to the camp." Do you recollect the date of this conversation?"—"It was the evening after we

had opened our attack upon the town of Pateta. I believe it was the 18th of September." "Whether you heard how it came to pass that neither this nudjeeve nor any other was produced at either Benares or Oude?"—"If any body had then asked for such depositions as a necessary evidence of the assistance Cheit Sing had received from the Begums, I should have thought that they were joking." "Whether or no, from your knowledge of a nudjeeve battalion, they would be likely to go for two rupees a man to serve in a remote country, far from their usual place of quarters; whether you think two rupees sufficient for the provision of a nudjeeve during a campaign?"—"I do think that a nudjeeve, or any other Indostan soldier not subject to the rigid discipline of the Europeans, would for two rupees go a very great distance and maintain themselves with it many days; for that money would procure them 150 pound weight of common grain in consumption in that country."

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Notoriety of the Begums' complicity.

And we examined afterwards a witness, Captain Simes, to prove that it was in fact a very usual thing to advance a sum of that sort, and it is called subsistence money.

Subsistence money.

"Had any thing been said to this nudjeeve when he was brought into the battery about the Begums, before he gave this account of being sent by the Begums?"—"Most certainly, not a word. I am sure that I was present during the whole of his conversation, and that I went up to him as soon as any person in the battery." "Do you recollect who began the conversation?"—"I do not recollect the name of the person who began the conversation." "Do you recollect the manner of beginning it?"—"I recollect the manner of the nudjeeve beginning it. The nudjeeve did not begin the conversation till he was asked who he was and where he came from. I knew him to be a nudjeeve from his uniform." "Who interrogated him or asked him?"—"I do not recollect: there were several people about him at the time."

Now, my Lords, here is a question certainly that disposes of all the testimony that Captain Wade has given upon this subject:—"Are you sure that he was not asked any leading question?" So that a person who is taken prisoner in the campaign, and asked questions by the soldiers that come about him, and you are not sure that a leading question was put to him—then you are not to believe anything he said! You should always have a lawyer at the elbow of an officer in the camp, to watch and see what is said. Never believe anything he says till you are sure a leading question has not been put. You may put leading questions for ever in a court of law, but in a camp you must mind and watch. For here the honourable Managers have contended they have a right to put leading questions and they have done it throughout—to Mr. Middleton for instance: and they claim a right to do it. But here, "Are you sure he was not asked any leading question?" And, because he was not sure that he was not, nothing that passes at the time is to have any effect!

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"You were not called upon to make any affidavit?"—"I believe I was, at the siege of Bidjegur, when those affidavits were taken; but I never was called upon, nor did I communicate it to Mr. Hastings, nor did I think it material or essential to the great question that the Begums were concerned, for there was no doubt about it."

That is the testimony of Captain Wade; and, inasmuch as a question had been put that seemed in some degree to cast an imputation upon this gentleman, who is a British officer, about when he was first called upon to recollect the circumstance of that conversation with the najib, we examined another British officer, Captain Grey, to the circumstance of his having actually received a communication from Captain Wade at the time, mentioning the circumstance of his having met with the najib, and the account that was given him:—

Evidence of Capt. Wade confirmed by Capt. Grey.

"Did you serve at the siege of Bidjegur?"—"I did." "Did you there see Lieutenant Wade?"—"I did." "Did Lieutenant Wade then mention to you any particular circumstance with respect to nudjeeves?"—"He did repeatedly." "What?"—"That some nudjeeves had been found at the attack of the batteries and fort of Pateta, one or two of whom had been wounded, and that they had declared they were a party sent by the Begums to the assistance of Cheyt Sing."

It certainly, therefore, is not, what I ought to beg pardon of these gentlemen for supposing anybody could imagine it to be, the invention of these gentlemen upon oath, at a subsequent period of time; but, in fact, it was soon after it passed that he declared it to Captain Grey, in a conversation that passed at the siege of Bidjey-gur.

Alleged partiality of witnesses an argument in Defendant's favour.

My Lords, the testimony of Colonel Popham upon this subject is in the printed Evidence, page 1801. I am not certain whether Colonel Popham is to be comprehended under the general class of witnesses who have memories *ex parte*, or who are witnesses from the enemy's camp. I believe, if that is an objection, it will be pretty difficult to find any gentleman that has been in India who is not liable to it. But I am perfectly at a loss to conceive how it can operate very much to the detriment of a gentleman standing upon his defence, who is held up as a monster of tyranny and oppression, that there is not to be found any one person who lived in the place where all the tyranny and oppression was exercised—not one person can be brought, who is not to be suspected as friendly to the accused and hostile to the charge. My Lords, I believe all the gentlemen in India are in the enemy's camp! A more honourable testimony cannot be given to Mr. Hastings than that they are so. And I should

be glad to ask, whether it is possible for a gentleman to defend himself respecting transactions in India, if all the persons who were there are to be precluded from giving evidence; or if their testimony is to be rejected, because they were in India; if they are all to be comprehended under the general suspicion that they are in the enemy's camp, and the truth of all they swear upon the subject is to be suspected? In what way then is a person to defend himself? To be sure, if your Lordships will require evidence that the nature of the case does not admit of, that is, evidence of the personal acts of the Begums themselves, and will reject all the evidence that the case does admit of, that is, the testimony of all the persons that have been in India, then, and only then, can the case on the part of the prosecution be substantiated by proof. 2 May 1793.

Examination of Col. Popham.

The testimony of Colonel Popham is respecting a circumstance that passed at the time of his actually meeting with another najib, whom he conversed with at the time:—

"Had you any means of knowing whether Cheit Sing received any considerable military assistance during the rebellion from any native power in India, and, particularly, from the Begums?"—"I understood that he had assistance from the Begums, from some corps called nudjeeves." "Was that the opinion of the British camp at the time?"—"It was." "Did you yourself see any of these nudjeeves in the country of Cheyt Sing?"—"I saw several of them against us upon the taking Pateeta. After all was quiet in and about the camp I went to see the place, and on the inside of the wall I saw a wounded nudjeeve. I asked him who he was. He gave me to understand that he was a nudjeeve sent by the Begums, and was one of a party of seven hundred that had been sent by the Begums the day before; that is, that he had arrived the day before; that he had received two rupees; that he had been two days in the service—that is, there; and had received two wounds. The expression in the Moorish language is* I ordered him to the hospital, where he remained, I believe, till he recovered and was dismissed; as I generally sent all the prisoners who had been wounded to the hospital, in order that they might be taken care of until they recovered, and then I directed them to be dismissed."

That accounts for a question that was put—why those persons were not examined afterwards? Your Lordships see that, as soon as they were cured of their wounds, they were dismissed and separated; and, in fact, it did not enter into the head of any person at that time to examine those persons, or take down their evidence in writing.

Colonel Popham, upon his cross-examination, was asked—

* The term is omitted in the printed Evidence, p. 1801.

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Cross-examination of Col. Popham.

"Whether you informed Mr. Hastings of these observations concerning the nudjeeves and the conclusion you drew from their appearance?"—"I do not recollect I particularly spoke to Mr. Hastings of the nudjeeves, because it was so universal an opinion and so well known a fact that they were there, by every officer and gentleman in the army, that I made no particular report of it."

This is upon the 20th of September, two months before the supposed fiction and plot of Mr. Hastings!

"Did you, when you had this nudjeeve in your power, keep him for any further examination relative to the objects of your conversation?"—"Not at all: I kept him merely for the purpose of his wounds being healed."

Colonel Popham is asked a great many other questions. I shall not fatigue your Lordships with hearing them, but nothing material came out to contradict the testimony given by Colonel Popham upon this subject; and therefore he proves, in another instance, a wounded najib apprehended and giving the same account of himself.

Evidence of Capt. Birrell.

The other evidence to prove this fact is the testimony of Captain Birrell. Your Lordships will find his evidence in the printed Minutes, page 1774. Upon being asked—"Were there any other prisoners made during this time belonging to the enemy?"—he says—

He examines two prisoners.

"I recollect two people being brought in by some of our pickets, an evening or two before the place was stormed." "In what uniform were these two men dressed?"—

Then he describes the dress of the najibs:—

They belong to a body of 500 men sent by the Begums.

"They themselves upon being questioned said they were nudjeeves. I have since understood that was the usual dress of the nudjeeves."—"What account did these men give of themselves, at the moment when they were taken in arms against us?" "They said they were part of a body of five hundred, who had been sent down by the Begums from Fyzabad to assist the Rajah."

There are other persons, describing themselves part of the five hundred sent by the Begums from Fyzabad to the assistance of Cheyt Sing.

Upon his cross-examination, he is asked:—

"Whether you kept any of those persons whom you took in the blue uniform to depose to the fact of their being employed by the Begums?"—"I never said I took the people." "By whom were they taken?—"By some of the sepoys." "By whom were you told that they were despatched by the Begums?"—"I heard them say so." "Were their accounts taken down in writing?"—"We had other things to do; they were not taken down in writing."

My Lords, to be sure, officers in a camp, when they are

engaged in a siege, do not always take down in writing the accounts that are given by wounded prisoners; but the circumstance of all these witnesses having related it at the time leaves no doubt in their memory of the fact; and, therefore, though not taken down in writing at the time, yet it is impossible that they could have forgot what passed. It was a short simple question, and a direct answer, giving an account of where they came from, to whom sent, and the purpose for which they were sent. 2 May 1793.

"If it was in the battery and you were so engaged as to make no further inquiry, how came you to inquire after those who sent them?" "The question was put by the officer commanding as a very natural one, I think."

"Do you know whether any of those supposed nudjeeves ever had been kept prisoners after the engagement?"—"I have already answered, I do not know what became of them. I do not know."

Now, here are three officers positively swearing to their meeting with three different descriptions of persons:—one a part of 500, another of 600, and another of 700; actually having conversed with them at the time, and each giving the same account—that they were sent by the Begums from Fyzabad to Cheyt Sing's assistance. Do your Lordships believe that these officers are perjured; that no such thing passed? My Lords, I will not suppose any such thing. Then, if these persons did actually give this account, were they themselves likely to be mistaken upon that subject?

Credibility of the account given by the prisoners.

When the prosecutors have adduced in evidence, as the only piece of evidence that they think is sufficient to prove that troops came from Lucknow, the declaration of an officer who did not command them, but only knew from their account what place they came from, surely, I have a right to say the soldiers themselves are less liable to be mistaken in what place they came from, and by whom they were sent! And it will hardly be considered as fair argument to say that Sheikh Amin, giving a list of troops, and saying 1,000 men came from Lucknow, proves the fact on the part of the prosecutor; and yet, on the part of the Defendant, that four najibs, who say they came from Fyzabad and were sent by the Begums, are themselves mistaken as to by whom they were sent and from what place they came!

Then, if we cannot suppose that they were mistaken, the last thing is, had they any motive to operate upon their

2 May 1793. mind to make them mis-state the fact? None is suggested: none can be. Their treatment was not likely to be better. They were all, with that indiscriminate humanity which belongs to British officers, treated with kindness. As soon as their wounds were healed they were sent away; and, undoubtedly, if any circumstance could be taken into consideration, their having been sent by a treacherous ally to act against us could hardly be a matter of recommendation for any persons acting under their orders.

Then, if they could not be mistaken and could have no motive for misrepresentation, and if your Lordships believe the fact that they actually did say so, I would ask whether this is not very strong, cogent, evidence to induce a belief that what these men represented was true--that they did constitute a part of the forces of Cheyt Sing, sent from Fyzabad by the Begums? But couple that with all the other evidence—all the account given of the place—all the co-operating conduct of the Begums in every other part of the country—what is said to all the different people—all the reports upon the spot: put all together, and then let me ask, whether there can be any rational ground for doubt?

Confirmed by evidence from other quarters.

To say that this is a mere plot, a fiction and contrivance, of Mr. Hastings, and that your Lordships will not believe there is good ground to believe the fact! It is a pretty singular thing to say, with respect to plots and conspiracies, we are to believe no such thing! It is not like the idle rumours that prevail in other countries—plots and conspiracies against Government that people have in their heads, that never existed. Here is the true plot—the plot of the Begums! As to some random ideas which some aristocratic people have in their heads, as to any plots existing in other countries and other places, that is all idle fiction; but this is the real, true, genuine, plot—that existed against the Begums at the time; a fiction meeting with universal belief at the the time, and proved with the variety of circumstances I have stated, all corroborating the truth of that which is represented as the mere plot, fiction and conspiracy, of Mr. Hastings!

Evidence of Col. Blair.

Then, to close the whole upon this subject, your Lordships have here had many respectable officers, persons who have been a great many years in the service, who are brought up one after another upon the subject, and I would,

without tiring your Lordships, only just read two or three of the questions put to Colonel Blair, in page 1777. He is asked:— 2 MAY 1793.

"Do you remember, while Mr. Hastings was at Chunar, receiving any intelligence of assistance given to Cheit Sing during the rebellion by any other power?"—"I have heard it universally reported that the Begums sent assistance to Cheit Sing from Fyzabad. I did believe it then to be true, and do so still."

Cross-examination:—

"From whom did you hear that the Begums assisted Cheit Sing?"—"I did not know it of myself, but it was the universal belief every where, in every company where I was, and I never doubted it. I know nothing official of myself." "Whom did you hear of it from at all?"—"From everybody that talked upon the subject." "From what person competent to give you information?"—"I have already said that it was the general belief every where; that every person with whom I conversed was of that opinion; and I never heard it doubted till my arrival in this country." "Did you ever use any means to ascertain the fact?"—"No means to ascertain it, for I did not doubt the fact." "What reason had you not to doubt it?"—"I might as well doubt the rebellion in Scotland in the year 1745, as I did not see it." "Whether you informed Mr. Hastings of the account you had received and to which you gave credit?"—"I never informed Mr. Hastings, because I have often heard him talk with certainty on the subject."

This gentleman was with Mr. Hastings at Chunar.

"You were asked, respecting the report that you spoke of, the assistance given by the Begums to Cheit Sing, whether that was a current report and belief of the whole camp, not of an individual, but of all the officers at Chunar at the time?"—"I never heard it doubted by a single individual at Chunar, either civil or military."

That is Colonel Blair's evidence.

Corroborative evidence of Capt. Simes.

Colonel Popham gives the evidence I have already stated. Captain Simes is asked:—

"Do you know of any assistance given to Cheit Sing during the rebellion?"—"I heard it spoken of as a thing universally understood. I did not doubt it." "Did any circumstance come to your knowledge, subsequent to that period, to induce you to doubt the truth of the report you had heard of the Begum's disaffection and assistance to Cheit Sing?"

My Lords, this witness arrived in England only in June, 1792. His answer is:—

"On the contrary, all that I heard subsequent to that confirmed my belief."

Capt. Shuldham.

Captain Shuldham was asked:—

Was there any general report with regard to the conduct of the Begums with regard to that insurrection?"—"The disaffection of the Begums was universally believed." "Did you ever hear it doubted while you continued in India?"—"I never did till my return from England. I believed it then, and I still believe it."

2 MAY 1793.

Major Lumsden.

Major Lumsden was asked:—

"Did you know or hear of any concern the Begums had in the production of those disturbances?"—"I have heard that the Begums excited the zemindars of these provinces to disturbances." "Was that the general report and belief of the country, at that period and afterwards?"—"It was." "Have you since known or heard anything to discredit that report?"—"I have not." "Did you ever see or converse with any individual in India who expressed a doubt of the concern of the Begums in those disturbances?"—"I never heard it doubted in India."

Mr. Wombwell

Mr. Wombwell says:—

"They were believed by every body I saw to be hostile to the English." "Did you yourself believe it then, and do you believe it now?"—"Certainly; the reports I heard were at the time of the rebellion of Cheit Sing."

and Col. Duff.

Then Colonel Duff, who arrived only in December, 1792, says:—

"It was universally reported and believed that they were hostile to the English Government. I never heard it doubted; nor do I believe that any man in the country ever did doubt it." "Did any circumstance ever come to your knowledge to induce a doubt respecting the report of the Begums' hostility?"—"Never."

Upon his cross-examination he was asked:—

"Where were you when you heard the reports respecting the disaffection of the Begums?"—"At Calcutta; but, wherever I went, I heard it."

The alleged plot of Mr. Hastings disproved by testimony of witnesses on the spot.

I will not tire your Lordships with reading any more of the evidence upon this subject. Your Lordships have now the testimony of all the witnesses upon the spot, and of all the evidences that have been adduced, to the latest intelligence that we have from the country, all corroborating the general belief that Mr. Hastings formed at the time and expressed at the time, as all these witnesses prove—all uniting in the same opinion, and bringing before you a variety of circumstances from every part of the country, tending to justify and corroborate that belief. I hope, under these circumstances, Mr. Hastings may consider himself perfectly justified, as a man in a public station, in having acted upon that which was the belief of the country; and that, after all the evidence that has been examined on both sides on the subject, after all the opportunity that has been given to collect any circumstance that could operate against it, or every person that could be brought against it, we have not, on the part of the prosecution, any one person brought who will say that he believes, what the honourable Managers assert—that it was the plot, the conspiracy and fiction, of

2 MAY 1793.

Mr. Hastings. We have many of their own witnesses that prove the contrary. We have all this body of testimony, written and parole, to negative that supposed fiction, and to justify the belief entertained by Mr. Hastings.

The question of Saadat Ali's complicity not before the Court.

One word, perhaps, I ought to have said respecting Saadat Ali—it shall only be a single word—because something passed upon that subject the other day. With respect to Saadat Ali, whether he was or was not concerned in the general league against the British Government is not a question now before your Lordships; and we are told so by the honourable Managers, when they object to evidence upon that subject. I certainly, therefore, will not pursue an inquiry upon a subject that is irrelevant, further than upon this single point—as to what Mr. Hastings has said respecting Saadat Ali, as far as any fair inference is to be drawn from it touching his belief respecting the Begums.

Observations of Mr. Hastings upon the conduct of Saadat Ali.

With respect to Saadat Ali, Mr. Hastings has said, in a way that does honour to his humanity:—

"Sadit Ali had the care of the wounded sepoys. He attended them, and gave some assistance and relief to them at a critical period of the war. He acted in that respect beneficially to the British power; or at least acted beneficially to the soldiers. The good he did was certain. As to the reports about him, I can neither refute nor substantiate them."

He leaves it in that state upon the subject with respect to Saadat Ali. He was involved in many reports that prevailed in the country at the time; but whether all the same circumstances that I have stated respecting the Begums apply equally to Saadat Ali [is doubtful]. Need I go into any of the circumstances to show that a person might very well believe the Begums to be concerned in the business, and give credit to all that passed, not standing merely upon report, but connecting it with all the other circumstances I have stated? Saadat Ali had, as they affect him, only those reports, opposed to the actual relief he gave to our wounded sepoys. Mr. Hastings gave him all the credit of that; and upon that account he has given that honourable testimony upon the subject of the humanity of Saadat Ali, speaking only in doubt of the part he acted against us. From thence I think it impossible to draw any inference, either to prove that Mr. Hastings did not believe the reports respecting the Begums; or that the Begums and Saadat Ali stand upon the same footing with respect to the evidence; or that, if your Lordships should not entertain the belief with respect

2 May 1793. to Saadat Ali, you are therefore to reject the evidence with respect to the Begums.

Recapitulation. I hope, therefore, I am warranted in considering that the Begums at that time did not act a very friendly part to the English, as has been asserted, but that they did give assistance, and material assistance, to Cheyt Sing ; and in so doing they were guilty of hostility against the British nation, and thereby annihilated all obligation, on the part of the British nation, any longer to afford them the protection which had been stipulated for by the treaty of October, 1775. We had, uniformly from the making of it, afforded the protection stipulated for under that treaty to those persons, who actually broke the treaty by use of the military power of their jagirs and of their wealth, which they were allowed to possess, and which they were before protected in the enjoyment of, against us.

Can it possibly be argued now, that that does not amount, by the law of nations, to a clear annihilation of any guarantee of that sort ; or that it is obligatory on the part of a nation to continue to afford its protection to a party who is making use of its power to the destruction of the persons guaranteeing them that protection? The principle I have already established by reference to the authorities upon the subject ; the application of it I hope I made out by proof before your Lordships : and I hope I have established the proposition I set out with, that is, that the treaty, which afforded a temporary bar to the execution of measures right in themselves antecedently, was removed by the conduct of the Begum in 1781. That brings it back again to the question I stated at first, respecting these two measures—the resumption of the jagirs, with a commutation equivalent, and the restoration of the remaining part of the personal property of the Nawab to the right owner—these two measures, which I proved under the first proposition to be in themselves right had no treaty at all been made, and having now removed that obstacle, have from thence derived additional arguments, from the use which experience has shown them to have made of that power ; which, added to all the theoretical arguments of the mischief of leaving it with them, strengthen the case I originally set out with and established, with respect to both measures, the propriety of adopting them at the time, and after the conduct had been observed that I have stated on the part of the Begums. This, therefore, comprehends the

Close of the argument respecting the right to the treasure.

argument respecting the measures themselves; the original propriety of them antecedent to the treaty; and the removal of the bar that that treaty had for a time interposed. 2 May 1793.

My Lords, I have now only to consider the other appendent matter which is stated in the Charge, with respect to the conduct of Mr. Hastings upon this subject; the motives for what he did; the mode in which he carried it into execution; and the consequences that are stated to have happened from these two measures.

My Lords, under this head—which I fear will draw me into more length, perhaps, than it will suit the convenience of your Lordships' time to give to it to day—under this head, I shall have to consider;—first, what were the measures themselves; in the next place, that responsibility that is imputed to Mr. Hastings at the time; the circumstance that is charged upon him, that he acted from bribery and corruption; the circumstance of the undue force made use of upon the Nawab, to induce him to execute measures the propriety of which I have established; the undue rigour and severity in the mode of carrying them into execution; and the dreadful consequences that the Article states to have proceeded from these measures.

My Lords, if it be the convenience of your Lordships that I shall proceed upon this head to day, I will endeavour to discuss it in the best manner I am able, taking up the first part of the subject—the conduct observed by Mr. Hastings in consequence of the behaviour of the Begums.

CONCLUSION OF THE SPEECH OF THOMAS PLUMER, ESQ., COUNSEL FOR MR. HASTINGS, IN SUMMING UP THE EVIDENCE FOR THE DEFENCE UPON THE SECOND ARTICLE OF THE CHARGE, RELATING TO THE BEGUMS OF OUDE; 6 MAY, 1793.

6 MAY 1793.

MY LORDS, with every sense of the great honour done me by the long and patient attention I have experienced from your Lordships, I present myself now for the purpose of examining the remaining subjects of this Charge; and, my Lords, having already trespassed so long upon your Lordships' time in the discussion of what appeared to me to be the main and principal objects of this Article, I hope it will not be necessary to discuss with the same minuteness those which remain.

Division of the remainder of the subject.

My Lords, the remaining subjects of this Article in the Charge appear to me to be reducible under one or another of the following heads:—

First, with respect to the mode of executing the two measures that have been already discussed.

Secondly, with respect to the motive imputed to Mr. Hastings for undertaking them.

Thirdly, the consequences stated to have arisen from them; and

Fourthly, the stifling an inquiry respecting the principal subjects of the Charge.

If the Article were well founded in all these, yet, if I have had the good fortune to succeed in establishing that it is not well founded in that which is the principal subject of accusation, these, which appear to me to be rather in the nature of aggravations and generally to afford something of pendent matter to the main accusation, would not, I conceive, be sufficient to substantiate the Article.

But I am aware that, to the perfect vindication of the honour and character of Mr. Hastings, it is necessary that these subjects should not be passed by, and particularly some parts of them, which tend to reflect great dishonour upon

Mr. Hastings; which have held him up to public indignation, as the author, the promoter and encourager, of the dreadful distresses experienced by the ladies of the Khourd Mahal. It certainly, therefore, will be expected that upon this subject some inquiry should be prosecuted, and the evidence carefully examined. My Lords, I hope I shall be allowed to bring within the compass of your Lordships' attendance on the present day all that I have remaining to offer upon the present Article. 6 MAY 1793.

The mode of executing the measures.

Under the first head—the mode of executing the measures—there appear to me to be again two points of consideration:—first of all, that part of the Article that respects the Nawab; and, secondly, what respects the Begums and their ministers. Each of these I shall, with your Lordships' permission, consider separately. I will first dispose of that part of the Article that relates to the Nawab, in the hope that by that means the subject may be the better discussed and considered.

The measures alleged to have been forced upon the Nawab by Mr. Hastings.

With respect to the Nawab, the Article charges that the measures were, in the first place, forced upon the Nawab against his consent; that he, at the time, declared the orders which he executed to be procured from him by extortion; that it was a fraud upon the Nawab, in procuring his assent and obtaining his authority for the execution of both the measures; and, with respect to one of them—that of the treasures—that it was a measure wrung from him with unconquerable reluctance.

To have been conceded for a bribe.

There is another article in charge respecting the Nawab which I have found it a little difficult, in the very statement of it, to reconcile with the Charge I have just now stated; for your Lordships will find it stated, as a heavy matter of aggravation to the measure in question, that this Nawab, who is stated to have been forced to execute these measures against his will, and his consent wrung from him with unconquerable reluctance, obtained this measure from Mr. Hastings by a bribe.

My Lords, that subject forms the last article of aggravation in the Charge, keeping it at some little distance from the other Charge, with which it does not seem to me to be quite consistent,—

"that all the above acts and deeds are still more highly aggravated by the gross and avowed corruption in which they originated—the said Warren Hastings, at or about the time when he executed these two

6 MAY 1793. measures, having accepted and taken to his own use a present or bribe of 100,000*l.* from the said Nabob of Oude."

So that here, my Lords, we have, in the first place, that the Nawab was compelled and forced to do the measures; and, in the next place, that he procured Mr. Hastings by bribery to assent to and to execute the measures, of his own choice!

I shall advert to each of these charges separately; and your Lordships will observe that the second of them comprehends that subject of division—the motive imputed to Mr. Hastings for all the measures comprehended within the present Article.

The alleged compulsion used towards the Nawab.

First then, my Lords, with respect to the compulsion and force and fraud used towards the Nawab to execute these two measures. In considering this question, I shall take the liberty of assuming that I have established, by the argument of the preceding days, the justice and the policy of both the measures in the Charge. Was it then a plan obtained from the Nawab, in the manner that the Article states?

The government of Oude alleged to have been virtually vested in Mr. Hastings.

In the first place, I shall observe that here again the Article does not seem to me to be very consistent with itself, when it states, in a preceding part of it, the whole responsibility of the good government of Oude to have been at that time vested in Mr. Hastings; that the Nawab is to be considered as a cipher, having no actual power whatever, but being in substance and effect entirely dependent upon the British Government, which Government was then concentrated in the person of Mr. Hastings; and the whole responsibility for the good government of that country vesting, therefore, in Mr. Hastings.

Now, if Mr. Hastings had the responsibility, surely it is but reasonable that he should have the power. And can it be just to say that the Nawab is nothing, for the purpose of fixing Mr. Hastings with responsibility, but that he is every thing, for the purpose of preventing the measures that are necessary for the good of the Government being carried into execution?

Necessity of the measures.

My Lords, it is proper in considering this subject to advert to what was the state of affairs, in order to enter into the necessity there was to adopt a plan, founded in wisdom and policy, for retrieving the Nawab's affairs, and for giving relief to the Company's, at a period of great distress to both. And here, my Lords, I am less surprised to find that mistaken calculations should be drawn, when I find the purposes

are altogether mistaken; for, upon two main and material points, that lead to the knowledge of all the state of affairs at that period, and of all that was done at that period, namely, first, the actual distress of the Company's affairs at that period, and, secondly, the large and heavy debt that was owing from the Nawab to the Company, I find with respect to both these subjects the prosecutors have entirely mistaken the subject, and have represented, in a way that I confess I have read with great astonishment, that, upon the 19th of September, 1781, whatever distress, whatever state necessity, might have existed before, at that period truly it had ceased—none existed upon which he could pretend to justify that measure. And, in the next place, with respect to the debt of the Nawab to the Company, it is stated in the Article now under consideration, forsooth, that this debt was a pretended debt! 6 May 1793.

Allegation of the termination of all state distress on the 19th of Sept. 1781.

Now these are two radical and fundamental mistakes. With respect to the first of them, the proposition stated by the honourable Manager is in the printed Evidence, page 757;—and I must really beg your Lordships' attention to the very extraordinary proposition and the evidence that is given in support of it, after which they state they have closed that head of evidence. In order to prove this proposition—that, whatever state necessity existed before, forsooth, at that period of time it had ceased—three documents, I think, and three only, are produced:—first, the instructions that were sent to Colonel Muir, for the purpose of negotiating a separate peace with Madaji Scindia; second, a congratulatory letter from Mr. Middleton to Mr. Hastings, upon the success of the Company's arms upon that coast; and, thirdly, the observations of Mr. Hastings upon the treaty of Chunar, representing that, at that period of time, there was no actual danger of an invasion of the province of Oude.

Examination of the evidence.

Danger of invasion of Oude.

My Lords, with respect to the last of them, namely, that there was no danger of an invasion of the province of Oude, I conceive it will hardly be contended that, because there was no danger of a fresh enemy coming upon us, that was any relief at all against the enemies that were then actually engaged against us. Undoubtedly, Mr. Hastings at that period of time did not apprehend immediate danger in that quarter; and therefore he thought it to be necessary, wise and prudent, to establish the force in that quarter and to apply it to defend the general affairs of the Company—to protect them in other quarters where there was a pressure.

6 May 1793. In the next place, with respect to the instructions for opening a negotiation with Madaji Scindia, undoubtedly that measure, which was planned by Mr. Hastings originally, which was the result of those measures that he took in opposition to his Council, and which ultimately contributed to bring about a general peace—that measure was ultimately productive of great advantage to the Company; but how the mere instruction for a negotiation, at a time when all the armies of our enemies were in the field actually pressing upon us—the Mahrattas in one quarter, and Hyder Ali in another—how the mere opening a negotiation with one of the confederated powers of the Mahratta States, the event of which was uncertain—how that could produce at that time any sort of relief to our pecuniary distresses, I am at a loss to conjecture. I am quite astonished to conceive how that document could possibly be thought material to be produced for such a purpose—to show, when the question is whether great pecuniary distress and difficulty did not press upon the Company at that time, that the mere prospect of a negotiation opened with one of the powers at war with us would relieve us from all the rest of the difficulties in which we were involved!

Negotiation with Madaji Scindia.

If they had examined at all the documents upon the subject, the honourable Managers would have found that, even after that peace was concluded, which was, I think, upon the 15th of October, 1781, Colonel Muir, to whom these instructions were sent, was prevented by his distresses from returning into the provinces, and was actually obliged to have a relief sent to him, obtained from Oude, before he could march and return with his troops into the provinces. The actual completion of the peace did not produce a relief even to that one individual army acting against that one individual power; much less did it produce any sort of general relief to the armies that were against the rest of the Mahratta States, with whom, your Lordships know, a peace was not settled till long after; much less did it operate in any respect to the relief of the distresses in other quarters.

Difficulties experienced by Col. Muir.

Then, last of all, what is the other curious document? The third and last document is a congratulatory letter upon our victory obtained over Hyder Ali. Really I am quite astonished how any person that had read a line of the events of that period, had conversed with any one person that had been in the Carnatic, or knew any thing of the state of

Victory over Hyder Ali.

6 May 1793.

affairs at that period, could represent that there was any actual relief to our pressing distresses at that period. Good God! not to know that the 19th of September, 1781, became the greatest pressure upon us; that from that time for two years afterwards was the enemy in possession of all the Carnatic, penning up the British troops and the settlement within five miles of the walls of Madras, in possession of all the resources of the Carnatic, and all that settlement drawing all its supply entirely from Bengal! Not to know that, in the other quarter, where General Goddard was pressed and acting against the Mahrattas, in the year 1782, there were constant applications daily representing the distresses in that quarter, and that the only resource of relief was from Bengal! And yet here it is represented to your Lordships that, at this period of time, truly, there they were relieved from their necessities!

Occupation of the Carnatic by the enemy.

My Lords, it appears in evidence now that, in fact, from that period our military expenses increased. It is in evidence, I think, that the actual amount of them was between 600,000*l.* and 700,000*l.* increase, in 1781 and the following year, over and above the preceding year; that, in that period, from September, 1781, to September, 1782, Bengal was under the necessity of sending to the other settlements 2,500,000*l.* sterling. But upon this subject I really will not take up your Lordships' time, because to state the proposition is enough to refute it, to every body at all conversant with the history of the times. We have put upon your Lordships' Minutes, merely that they may be known, the pressing importunities made upon Mr. Hastings at that period of time, representing the great difficulty and distress that every quarter laboured under. We have put them on the Minutes, merely because they seem not to be known; and on that account, I presume, it is that no credit is given to Mr. Hastings for his exertions at that period of time to save the Company's empire—because they did not know the danger of it.

Increase of the military expenses.

Mr. Hastings has stated that he left Calcutta with an impression of the accumulated danger that pressed it. Whether that was the true state of affairs at that period, or that which is represented on the part of the honourable Managers, I refer your Lordships to all the evidence upon the subject to decide between us which has fairly represented the state of affairs. And, my Lords, give me leave to say that, if there is here a mistake, it is impossible to judge

6 MAY 1793.

Ignorance betrayed by the Managers of the history of Indian affairs.

rightly upon any one transaction at that period. If you are not acquainted with the state of affairs, how is it possible to judge of the measure? And, if you mistake upon that which is matter of universal notoriety, and which every child in India knows to be the reverse of what is stated by the honourable Managers—if you are mistaken upon all that subject—surely it is not too much to say that a mistake may easily be made respecting any particular transaction happening at that period of time, when there is such fundamental and total ignorance upon all the state of affairs at that period.

Mr. Hastings alleged to have incurred the responsibility of the government of Oude.

My Lords, in the next place, with respect to the Nawab's debt, it is stated that Mr. Hastings by his acts rendered himself responsible for the good government of Oude; that he truly put upon his own shoulders that responsibility by the illegal delegation, and by the appointment of Mr. Middleton in the place of Mr. Bristow. I say that these measures were the consequence and not the cause of that responsibility that belonged to him; a responsibility not in Oude merely—a responsibility for the safety of the empire committed to his care—a responsibility in some respects for Oude, from the connexion we have with Oude—a responsibility arising from that cause which I understand is denied, namely, the heavy debt due to the Company. You deny that, and look out for other causes to impute the responsibility, because you do not know the true one—a real and not a pretended debt. Am I to go into proof of that? An actual debt to the amount of forty-four lacs never was disputed.

Reality of the debt to the Company.

Out of that pretended debt, and the pretended debts of the subsequent year, did Mr. Hastings, by the wise plans that he adopted with the Nawab, and his exertions in the country of Oude at that period of our distress and difficulty—as is now proved before your Lordships—obtain the full liquidation of the whole of the Nawab's debt from himself, and an actual relief to the Company's affairs from this country of Oude. After it had been declared, by a gentleman who came home from India, that the affairs of Oude were utterly and irrecoverably ruined, after it had been declared that the debt was desperate and there was no hope of obtaining payment of one rupee of it from that country, did Mr. Hastings, by the wise plans which he adopted, from a country supposed to be utterly and irrecoverably ruined, subsequent to that period, in the year 1781, and the four

Its liquidation due to the exertions of Mr. Hastings.

following years, actually obtain, as is in proof before your Lordships by Mr. Wright, a resource for the Company's affairs of 2,490,000*l*. 6 MAY 1793.

With respect to the actual extent of the debt from the Nawab, through our having at that time a great stake in the Nawab's country, where one third of our army was supported—where we were to derive this important resource, at a period when it is stated by Mr. Auriol all the resources at Calcutta were exhausted—when every attempt to raise money by loan, remittance, and every other method, was tried without success—at that time did Mr. Hastings undertake this journey, in which he is represented to have acted the part truly of a felon, going, I think, to Hounslow or Bagshot—at that period, did Mr. Hastings, deeply impressed with the strong obligations that rested upon him to try if by any means he could retrieve the Company's affairs, then sinking under the accumulated weight that oppressed them, [seek an interview with the Nawab at Chunar, with the view of inducing him to take effectual measures for liquidating the heavy debt in which he was engaged to the Company]. This desperate debt was recovered from a ruined country that did ultimately, by the good plans adopted by Mr. Hastings, become a fertile subject of resource. Here it is pretty extraordinary again that these charges, with the same consistency which belongs to them throughout, have in one Article stated this as a pretended debt, for the purpose of accusation against Mr. Hastings, and in another Article have stated the direct reverse—have stated the actual existence of that debt as the subject matter of accusation! The Article I allude to is the Article of Presents, where your Lordships will find that the actual existence of the heavy debt from the Nawab to the Company is stated as a matter of aggravation of the receipt of the money from him at that period. Therefore, I conceive that, upon these main fundamental points, which afford a key to discover the policy of the measures of that period, I hope I do not act disrespectfully to the honourable Managers when I say that they have not, upon this subject, stated the true state of affairs at that period.

Desperate condition of the Company's finances.

Inconsistency of the charges in respect of the debt.

In consequence of this responsibility, Mr. Hastings met the Nawab at Chunar. Mr. Hastings there settled with him a plan of arrangement. And I beg that any body who reads the history of that country, all the difficulties of which—all the misgovernment of which—are most unjustly imputed to

6 MAY 1793 Mr. Hastings, all which existed at the period of those halcyon days when the Government is stated to have been with the majority—many of which have existed since that period of time, and are attributable, as the Marquess Cornwallis has stated, to the character of the prince of the country, and which every exertion on our part, either of actual interference or of withdrawing that interference, have not been able to remedy — evils which existed from those causes which Mr. Hastings is blamed for having endeavoured to remove — let him read the treaty of Chunar, the instructions given to the Resident upon that subject, and compare every one of them with the actual existing evils in the country of Oude, and I am persuaded the result will be to see that every one of them was wisely calculated to remove the great pressure upon the Nawab's affairs. He was advised to retrench his military establishment, to reduce his expenses, large as they were:—your Lordships remember all the evidence upon that subject too well to make it necessary to advert particularly to it: —to regulate it by separating his private expenses from his public, a matter which Lord Cornwallis has also earnestly pressed upon him. It was recommended to him that the large and undisciplined army he had should be reduced to a smaller number, and regularly paid. He was advised to appoint proper persons as amils in the government of his country; to remove those persons from employment whom Mr. Hastings is accused of having interfered against, but concerning whom we have been under the necessity of giving evidence, in order that it may be really stated what was the actual situation of the Nawab of Oude at that period, what sort of people were at that time about his person, and the necessity there was for some good advice to be given by those who were deeply interested in the welfare and prosperity of his country.

System for the better government of the country.

The resumption of the jagirs.

My Lords, as a necessary part of that system, the first and most obvious measure, if any good could be done in the country, either in the police government or finances of it, was to reduce that impolitic establishment, the jagirdars, which kept the whole country in confusion—military establishments with a distinct military power under their own control and government—persons to whom a bounty had been given in that way in the shape of pensions issuing out of land, and then the land given to them, and all the military power annexed to it. Upon that subject I have already detained your Lordships upon a former day, and I do not

mean to repeat my observations; but I say that the constitutional power which was vested in the Nawab to resume the jagirs of his country was extremely necessary, at that period of time, to be carried into execution with moderation; and it was done so. 6 May 1793.

Many persons, to whom that voluntary bounty was discontinued, were not fit objects of the continuance of that bounty. With respect to the rest, a compensation was made—an equivalent was provided for them. That is in proof before your Lordships in Mr. Middleton's evidence, page 607, in Mr. Middleton's letter, page 808, and in other parts. Your Lordships will find, in truth, with respect to these jagirdars, that, though the Nawab resumed the power, that they ought not to possess, though his financies required that the bounty given to those persons should be in some degree reduced, at a period of time when he was reducing his general military establishment, he was under the necessity, undoubtedly, of reducing the military establishments of his subjects; otherwise, exactly in the same proportion as he was reducing his own military power and leaving the other to remain, would all the evils that had existed before exist in a greater degree. Therefore it became a part of the necessary regulations, at that period, that this plan should be carried into execution.

Inconsistency of the Charges.

Here, again, I observe a singular degree of inconsistency in those who arraign the conduct of Mr. Hastings; for, at one time, we are told by the Article that the resumption of the jagirs produced general confusion and discontent in the country. It is represented to your Lordships as if it were the confiscation of the estates of the whole nobility of the country; and the discontinuance of the voluntary bounty of the Nawab, in the mode that the constitution prescribes, is represented exactly in the same point of view as if a mandate from the sovereign of this country were to issue depriving your Lordships of all your estates. Again, a document is given in evidence, a very extraordinary document, by which this same measure of resuming the jagirs is complained of for the direct opposite reason; that is, that it tended to unite the power of the Nawab, to consolidate his authority, and to make him on that account formidable and on that account dangerous, and therefore it was a wrong and an improper measure. The document I allude to is a letter from the court of Directors, in the printed Evidence, page 920.

6 MAY 1793.

Letter from the court of Directors.

My Lords, that document, which is produced against us, and is very much relied upon on the part of the prosecution, states:—"Neither can we allow it to be good policy to reduce the several jagirdars, and thus uniting the territory and the troops maintained for the protection of that territory under one head, who may by that means at some future period become a very powerful enemy to the Company." Now here is a very singular objection made—that, at a period of great distress to the Nawab and us, at a period of general war, after there had been a recent insurrection in the country of the Nawab, they cannot allow it a good measure that all the military power should be united in him, because he might become a useful ally and not an encumbrance to the Company—because by that means he might be enabled to reduce the army, and so to pay the heavy debt he owed the Company! I should wish it were settled whether we are to be branded with this measure, because it did, in fact, prevent confusion in the country, or occasion it! In one case, they say—"You shall not unite your ally. You make him too powerful; you exonerate his finances." Then they come on the other side, and say—"I impute to you that you took a measure that had a contrary effect; that it produced discontent and ruin to the Nawab's affairs." I conceive they are not quite inconsistent; but that, in truth, the policy stated on the part of the Directors is mistaken, and the fact is mistaken on the part of the honourable Managers; that the fact is as the Directors have stated; that it did tend to unite the power and authority of the Nawab; and the policy was obvious, that his advantage was our advantage, and most obvious in proportion as it relieved him.

Their mistaken policy in objecting to the measure.

Actual result of it.

Then, with respect to the actual good effects produced by it, there is one other document upon this subject, by which, I conceive, it will appear that the confusion and discontent that is stated by the Article to have been the consequence of that measure did not result. In a letter of the 11th of February, 1782, from the Resident, he says:—

Letter from the Resident.

"I have, in confirmation of the above letter, received one from [the Minister, informing me of the accomplishment of this reform; from which, with the total resumption of all jagheers, which is now perfectly completed,] I have every reason to hope for the most beneficial result; that every part of this government will now be in a state of regularity and tranquillity scarcely ever before experienced." *

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* Printed in the Appendix to the "Minutes of the Evidence," p. 101.

That is the evidence to prove that the measure operated to the confusion and discontent of the whole country ! 6 May 1793.

I hope, therefore, my Lords, that, in this state of things, it would not have been matter of great blame to Mr. Hastings if he had not acceded to the opposition made on the part of the Nawab, embarked as we were upon the same bottom with him; if he had objected, and we insisted that that should be done which was necessary for the safety of both. But, my Lords, how does this matter appear? The representation given of the compulsion used over the Nawab, of the force and violence and unconquerable reluctance, comes from the representation of the Resident—from the same quarter—that is, from the testimony of that Resident given upon oath. I refer your Lordships to what was the real cause of a temporary opposition given to this measure. Mr. Middleton describes the opposition. Mr. Middleton is the person examined to the cause of it. He has stated, in his evidence upon this subject, that, in truth, the Nawab had for a long time talked of taking from the Begum the treasures which she kept from him, and which he considered as his right:—

Account of the Nawab's opposition to the measure.

"I am very sure there is no period during my residence with him in which he would not have done it, if he had not considered the faith of the Company pledged to the Begum, and to stand between him and them. I never conceived the resuming the jaghires of his mother and grandmother as objected to. I must make the same observation with respect to that as I did to the seizing the treasures—that I am very sure there was no period during my residence at which he would not have done that also, but he would probably have given them an equivalent. They were a perpetual cause of quarrel. He wished to have resumed them, and would have done it, unless we had prevented him. The objection probably arose from the resumption of other jaghires, of persons to whom he was personally attached.—That is my opinion."

Cause of his objection.

Then he is asked—

"Whether the Nabob would not have resisted the resumption of the jaghires of his mother and grandmother, if he could have spared the jaghires of his favorites?"—"I am very clear of that opinion. I always was so, and am so at this moment."

Then let us take the same witness, on both sides, to prove compulsion, to prove reluctance, and to prove the cause of it. I would ask your Lordships whether, after the Nawab, in his conference at Chunar, had acceded to this measure as a necessary one for his safety, when he returned to his own country, and was surrounded by those whose abuses were to be prevented by it—whether the influence of those

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Not such as to warrant the abandonment of the plan.

persons who wanted to save their own jagirs, operating upon the Nawab as the sole cause, according to the testimony of this gentleman, would have been a satisfactory reason to have exculpated Mr. Hastings in desisting from the execution of a wise, a necessary, and a just plan for the relief of the Company's affairs and ours, because it was objected to by those whose abuses were to be removed by it? If your Lordships unite the cause and the fact, you will see that the Nawab, at a very antecedent period, when he would have been wrong to execute it, was desirous of doing it, namely, while the treaty existed. After the treaty was done away by the conduct of the Begums, and there then remained no bar to the exercise of his right, to have at all attended to any opposition, made by those persons, to a measure of the sort that I have described upon this subject would have been wrong.

The Nawab's real sentiments on the subject.

I would also refer your Lordships to evidence which shows, in point of fact, that the Nawab—whatever Mr. Middleton might represent at one period respecting him—that other letters of the Nawab, and in many other occasions, not at an antecedent period only but afterwards, when the measures were carried into execution, uniformly express, at a time when he certainly had the free command of his own sentiments, his approbation and earnest wish for the prosecution of both the measures. I would particularly refer your Lordships to the account sent by Mr. Bristow, which is in page 901 of your Minutes, where your Lordships will find that, even after all, in the latter end of the year 1782, when the Board were desirous of removing the restraints that had been rendered necessary to obtain the payment of the balance, the Nawab himself objected to it, desired that they might be continued, and was with extreme difficulty prevailed upon to adopt that remission, and desired that more might be tried for the purpose of obtaining his right.

He adopts the measures as his own.

I find, in a letter from the Nawab, in page 816, he states the measures as his own, in both instances, and expresses an earnest wish for the prosecution of them. It was in consequence of some objection that the Begums had made upon the subject. The Nawab being informed of what had actually passed, he says first, in controverting a proposition that she had advanced—that is, that the jagirs were not granted by him but his father—a point upon which the Nawab and she frequently differed—a point of no consequence with respect to the actual duration of the period for which it was granted;

but upon that subject being referred to—what the Begum had said, [he states:]— 6 May 1793.

Letter of the Nawab.

"She says her jaghires were not granted by me. At the time of the late Nabob's death, these mhals were under the charge of Jewar Ali Khan, on the footing of other aumils, insomuch as the accounts, &c., were lodged in the dewan's office"—

And then he states, that, after his death, he had made over these mahals to her in jagir—

"that it could not be said I left my mother unprovided. The business and mahls of the khalsa suffer considerably, and are much prejudiced by the authority and conduct of the aumils of these jagheers, mahls, as also from the insolence of the household khajah;—witness the conduct of Behar Ali Khan's naib at Tanda. My life, estate and dominions, originate from the friendship of the English Government. Yet what knavery have not these household khajahs been guilty of! As therefore it is not prudent that these mahls should be continued in the charge of my mother or household khajahs, I have appointed my own aumils."

Then he says:—

"After the death of my father, whatever was due from him to the Company, also to the troops, I took upon myself, but whatever effects there were remained with my mother. Some time since she gave some part to me, but it went no way in the discharge of the claims of the Company or troops.

Then he states:—

"For these many years I have endured much inconvenience and troubles for the discharge of these, yet half is not made good; and I am in daily anxiety on this account, from a desire to discharge all just dues to the Company. It is my intention to proceed to Fyzabad in ten days, the mohrum being over, when I mean to request of my mother the whole of my father's estate, to enable me to pay off all debts to the Company. Agreeable to the laws of God, all my father's effects are my right."

Here is a letter from the Nawab himself going to both measures, and showing that, upon this subject, whatever temporary reluctance there might be upon it, he had at first acceded fully to it, and afterwards finally approved of it. I hope that, if I have established that the measures were in themselves just, politic and necessary, at that particular period of time, for the relief of the Nawab and us, no valid objection will be taken to the execution of them upon this ground—that they were adverse to the sentiments of the Nawab.

Charge that the measures were obtained by bribery.

I come now to consider the other proposition, the converse of it—that those measures which were forced upon the Nawab were obtained by bribery and corruption. Here

6 MAY 1793. they become the measures of the Nawab altogether. Here Mr. Hastings is merely giving his assent, and giving it for bribery; for it is not with respect to one or the other of these measures, but all of them are stated to be procured by bribery and corruption. The Article states—"All the above acts and deeds are still more highly aggravated by the gross and avowed corruptions in which they originated." The light in which this transaction is here viewed is that of a bribe. It is in another Article represented in another point of view, as the bare receipt of a sum of money taken at that period of time from the Nawab, but here it is represented as a bribe;—that Mr. Hastings received a bribe, and on that account was induced to the measure.

Now I will refer your Lordships to the evidence of the prosecutor upon this subject; and I venture to state that there is not a single tittle of evidence to support this charge, but that every circumstance that is given in evidence on the part of the prosecution tends to refute it. In the first place, it is stated that the reason for imputing it to have been a bribe for these measures is—because the receipt of the money accompanied the two measures. It is stated—"that he, at or about the time when he executed the treaty of Chunar, withdrew the guarantee, and planned the seizing of the treasures, as aforesaid, having accepted or taken to his own use a present or bribe." In the first place, that is not true; it was not so. Your proposition upon the Article that you have here laid as the foundation upon which you draw the motive is, upon the very face of it, untrue. The money was not received at the time when the measures were executed! It is stated by the prosecutor himself not to have been at the same time. The receipt of the money was two months antecedent to one of the measures, as he himself has stated. And here is a very singular thing indeed! We are told, with respect to the resumption of the treasures, that it was entirely a plot and conspiracy of Mr. Hastings subsequent to the 15th of November, when it is perfectly well known that the money was received from the Nawab on or before the 19th of September, 1781. Then here I shall be glad to ask again, where is the consistency of the Charge on the part of the prosecution which makes the foundation of this inference—that the measure was procured by bribery—that it was done at the same time; and, in another place, states the whole plot to have been devised by Mr. Hastings two months afterwards?

Falsehood of the allegation that Mr. Hastings received a present.

In the next place, it is stated that this money was received by Mr. Hastings for his own use. All the evidence that they have adduced proves the direct contrary—that he did not receive it for his own use, but received it for the use of the Company; and, further, that he actually applied to the use of the Company every rupee of it; and that is proved on the part of the prosecution! The evidence adduced—the accounts given at the time by Mr. Hastings, which are produced in evidence on the part of the prosecution against him—all of them prove that he at the time received them for the use of the Company; and the accounts that are actually given in from the Company's accountant, Mr. Larkins, proved it actually carried to the credit of the Company at the moment, and every rupee of it actually applied to the use of the Company. For this I refer your Lordships to the Evidence, page 540. There Mr. Hastings, whose account is given in evidence against him—and if it is given in evidence against him for one purpose, it must also be taken for him for another, and particularly when it is stated what is the use and intent and the object of the person in receiving it—there Mr. Hastings states:—

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Allegation that it was received for his own use.

Proof of its application to the use of the Company.

"The sums were taken for the Company's benefit, at times when the Company very much needed it."

Printed Evidence, page 557—

"The ten lacks"—which is the sum in question—"which I have accepted for the use of the honourable Company, and promised to account for the same."

In another page—

"These were converted to the Company's property through my means, and in consequence of the like original destination."

In Mr. Larkins' account, printed Evidence, page 560, there is an account of sums received on account of the honourable Company by the Governor General, or paid to the treasury by his order, and applied to their service. The sums are carried to the Company's credit. Here another ground upon which this inference is drawn is mistaken. They were not, by all the evidence, received for the use of the individual, but for the use of the Company, and so applied.

In the next place, it is stated that it was "gross and avowed corruption." The evidence to prove it gross and avowed corruption is, that he took great pains to conceal it! Mr. Middleton was examined to prove the peculiar pains taken by Mr. Hastings to conceal it: page 547:—that is, to prove it to be gross and avowed corruption. At the same time, when they are examining the evidence to prove a great

Charge of attempt to conceal the receipt of the money.

6 MAY 1793. deal of pains to conceal it in India from the persons in India, do they give the letter from Mr. Hastings to his employers. So that this gross and avowed corruption is only by communicating the knowledge of it to the court of Directors! That is the evidence to prove gross and avowed corruption!

Improbabilities involved in the Charge.

Then, my Lords, in order to take away the merit of Mr. Hastings in the communication, it is stated that Mr. Hastings did it because he could not conceal it: it was of a magnitude he could not conceal, and therefore he took the merit of communicating it. Here again, I shall be glad to ask—what is the probability? Here is a person supposed, in a public station, to have sold himself for bribery, with a perfect knowledge that it could not be concealed; knowing at the time that the magnitude of the sum must necessarily produce detection and discovery. He is supposed to have done this with a full knowledge that it must be known, but, in order to prevent any doubt upon that subject, he who commits bribery and sacrifices the interest of his employers takes care that it shall be known to his employers, and himself communicates it to them! Nay, further; having sold himself for bribery and sacrificed the interest of his employers for the sake of money, he at the very time gives all the produce of it to his employers, and tells them that he has done so! This is one of the most singular instances of disinterested corruption that can possibly be stated—that a man, at the very time he sacrifices his public duty for money, tells his employer of it, and precludes himself from all possibility of being benefited by it!

But my Lords, it is said:—"That here Mr. Hastings applied to the court of Directors and looked to them as the channel from which he was to be ultimately benefited by it."

Mr. Hastings' application to the Directors evidence of his good faith.

Then, if he did, could he have been conscious that he had sacrificed the interest of those employers, when, at the very minute of the measure, he states to them that he conceives himself intitled to their gratitude for the services recently rendered to them, and upon that account applies to them for reward, as the only channel through which he could receive it? That circumstance fairly examined, so far from showing that Mr. Hastings had recently sacrificed the interests of the Company for bribery, shows that he was conscious of having fairly executed his trust, and discharged it in a way advantageous to his employers.

I hope, therefore, upon this subject also—as all the circumstances belonging to it are negatived by the evidence adduced on the part of the prosecution—as there is no one

circumstance to show that Mr. Hastings was actuated in the measure now under consideration by any but a pure regard to the good of the public, to the faithful execution of the duty and responsibility that he was under, at that period of time, both to the Nawab's government and ours—as there is no evidence to prove the contrary, and as all the evidence establishes the reverse—I am persuaded that your Lordships will not adopt this part of the Charge—to impute a sinister and corrupt motive, when there is a plain obvious motive for all the measures that were executed on the part of Mr. Hastings. 6 MAY 1793.

No corrupt motive proved.

My Lords, I have now gone through that part of the Article that respects the Nawab, on these two Charges of compulsion and bribery; I trust, therefore, that I may conceive that, if the measures were right in themselves, which I have proved, I have disposed of this appendant matter, which is annexed rather by way of aggravation to the execution of the measures, in the way in which it is imputed to Mr. Hastings.

Manner of executing the measures.

The next subject of consideration is—whether, in the manner of executing those measures towards the Begums and their ministers, there is anything that is to be considered as matter of imputation upon Mr. Hastings. And here I conceive that this proposition must be granted to me:—that, if the measures were right, if they were just, politic and necessary, you are to allow those who are to execute them those means that are necessary for their execution; not to exceed, not to go beyond the means that are necessary, but to use such as are absolutely necessary for the execution of the measures. If the measures are right, that will justify the means adopted for the execution of them. Then I will consider what is imputed to us upon this subject.

Force rendered necessary by resistance of the Begum.

I conceive your Lordships will find that all this part of the subject is comprehended under exactly the same mistake that involves all the rest of the Article, and that, when it is fairly considered, it will be found that, with respect to the execution of the measures, great moderation was shown to those persons on the part of the Company, and that, in truth, the violence and the outrage were on the part of the Begums and their ministers. If the measures were just and right, their conduct in resisting them and rendering military force necessary for the execution of the Nawab's authority—in driving the prince of the country, at the time when he was to resume his own rights, to the necessity of having recourse

6 May 1793. to military authority for the purpose—I conceive, is not fair matter of imputation upon those who use the force but upon those who resist it.

My Lords, I have already shown that there was no bar whatever to the resumption of the Begum's jagirs; and that it appears by the treaty of Chunar that, notwithstanding all their perfidy and misconduct towards the English Government—notwithstanding the ill use they made of their protecting power under a former treaty, all the substantial benefit of it was amply reserved to them; that a full equivalent was still provided for them; and that, to many purposes, the former treaty was actually considered as in force—to all those solid and substantial purposes respecting the maintenance to be derived from the jagirs which they could fairly wish for; and your Lordships will find that nothing was taken from them but that sort of power which they had greatly abused, and with which they were likely again to disturb the Government.

Indulgent treatment of the Begums.

The absence of a public trial beneficial to them.

It will, I conceive, hardly be considered as a severity towards these ladies, that the Nawab did not proceed in a way in which undoubtedly he might, had it been a country where there was a court of justice established for the trials of persons of this description; that the Nawab, against whom and against whose government those who lived under it had, by promoting insurrections within this country, not only been guilty of a breach of the condition upon which that property was vested in them, but had also been guilty of that which would amount to treason and rebellion in that country—it will hardly be considered as a hardship upon these ladies, that the Nawab did not bring them to a public trial for their crime, but merely contented himself, and that we were likewise content, with his proceeding to the resumption of those rights which originally belonged to him, without bringing them to a public exposure and trial; which indeed perhaps could not be done in that country, where there are no courts of justice competent—no process. And I observe the honourable Managers have given in evidence that particular disgrace, exposure and calamity, would have befallen ladies of this description by any civil process.

Impracticability of a trial.

Everybody that knows anything of the country of Oude knows that there was no process by which the Nawab, had he been disposed, could have tried his mother and grandmother for high treason. But his not having proceeded against them in that way was surely not a matter of hard-

ship, but a benefit to them. The only effect given to what was done was, to say "You have now removed, by breaking the condition, the only bar placed to the resumption of those rights. The resumption of those rights is now the right of the Nawab." At the time that that was done, it was done in this manner by the Company, by the treaty of Chunar. Though that former treaty was entirely abolished, yet did the Company still, on behalf of those ladies, insist on the Nawab's granting them an equivalent to the full amount of their jagirs.

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An equivalent of the jagirs granted.

I will now show your Lordships—though it is stated in the Article here as a matter of imputation upon Mr. Hastings—

"That no steps of any kind were taken either by the said Warren Hastings, or by his order and authority, to secure the amount of the said jaghires to be paid to the said ladies."

I will show your Lordships that an offer was distinctly made to them of that equivalent; that a communication was made to them from the Nawab, through the medium of the Resident, of the necessity that there was for this measure of a general resumption of the jagirs for the good of his country, comprehending theirs among the rest, and which surely ought not to have been excepted, when recent experience had shown the bad use which they in particular had made of their power. That measure was communicated to them. They were told, first by the Nawab and afterwards by the Resident, that a full equivalent should be made to them. I show your Lordships a letter written upon that subject by the Resident; and you yourselves shall judge whether there was any extraordinary rigour and severity towards these ladies, after the conduct that I have shown your Lordships they pursued.

I find, in the printed Evidence, page 815, a letter addressed from the Resident to the Bow Begum:—

Letter of the Resident to the Bow Begum.

"The Nabob has thought proper, on account of the inconveniences, loss and indignities, he sustains from the authority exercised by the jaghirdars throughout the country, to resume all the jaghires in his dominions, in which yours is necessarily included; but as the amount"—

now I beg your Lordships to attend, whether they have not here all the substantial benefit the former treaty gave them—

"but as the amount of your jaghires is confirmed to you by a written agreement between you and the Nabob, and guaranteed by Mr. Bristow n behalf of the Governor General and Council, it will be made good to

6 May 1793. you in ready money. If you will, therefore, be pleased to transmit me an accurate account of the amount you realized from your several jaghires, gunges, bazars, etc., as specified in the coulnama, after deducting the expences of collection, sebundy, and all other charges, I will pledge myself that the same sum shall be regularly transmitted to you: at such stated times and in such proportions as you shall prescribe."

My Lords, here then I think it is pretty clear that a distinct offer was made to them, on the part of the Resident, of the equivalent stipulated in the treaty of Chunar. Again, I find, even by her account—she states in a letter, in page 817 of the printed Evidence—

"Azoph ul Dowlah"—that is, the Nawab—"wrote to me that he had sent his own aumils into my jaghires, and would pay me ready money from his treasury."

There, then, is distinctly proved the offer made by the Nawab, and made on the part of the Resident. Your Lordships will find in another letter, page 815, from the Resident to the Bow Begum, that he states, after acknowledging her letter, to the contents of which I must beg leave to refer your Lordships,—

Repetition of the offer on the part of the Nawab.

"As far as relates to securing you the actual income of your jaghires, I certainly am bound in duty to interfere, because the faith of the Governor General and Council, my masters, has been pledged to you for it; and I am ready, as I before informed you, to settle that point to your satisfaction. But as to continuing lands, etc., in the form in which you have hitherto held them, his excellency the Nabob is the master, and I cannot oppose his pleasure. It behoves you to reflect well on this matter. I am equally the friend of you and your son, the Nabob, and can have no prejudices in favour of one or the other. His excellency declares, and I have myself seen too many proofs to doubt it, that the authority and dominion exercised by the jaghirdars is extremely prejudicial to his revenue and government. A medium, therefore, being proposed, by which you lose nothing and his excellency gains so much, I should"—there is a word left out, I presume—"I hope you would not continue to reject it, since it is unquestionably the same to you whether you receive the income of your jaghire through the channel of an aumil appointed under the Nabob's authority, or from the hands of your own immediate agent. For the regular remittance he makes himself responsible."

Payment guaranteed by the Resident.

Here then is a distinct offer of the total amount; [the faith of the Governor General and Council] to be pledged as a security for the regular payment of it from the Nawab.

Then what is the conduct of those on the part of whom a complaint of violence and outrage is made? This measure, suppose for a minute it had not been strictly justifiable, yet, when it was to be conducive to so much good to the Nawab's affairs, when the benefit that would result from it to the country was explained, when so little actual loss was to be

sustained by this person particularly, it might naturally have been expected that no objection should have been made, on the part of his own mother, to a proposition of that sort, likely to be productive of so much good to him and so little loss to herself. 6 May 1793

Intemperate answer by the Begum.

Now, my Lords, what is the answer to this? We have three letters writen by the Bow Begum—two to the Resident, and one to Hussein Reza Khan. I have stated some part of them upon a former day. Your Lordships will remember the violent and intemperate expressions contained in them, intimating her disposition to sacrifice the whole country, if she could not obtain the object of her own ambition:

"If my jaghire falls, the country shall not stand. Remember this, and make the Nabob acquainted with it. It is not well that for a trifling matter much trouble should be occasioned. Recall the aumil to whom the charge of the jaghire of Salone has been given; if not, it will not be well done. Hitherto I have been silent and patient, but I cannot continue so longer. Should the country be lost to me, it shall be lost to all. I give you this intimation, note it, that the consequence shall be extremities."

Again she states, what I before had occasion to [quote] to your Lordships, that violent sentiment—

"Should I be necessitated to quit the country, God grant that no soul may be able to remain in it in peace! If you mean to proceed, send aumils into Nezif Khan's country and try the consequence."

This is the answer given to the proposition that was made in the most decent and respectful terms to these ladies, after the conduct that they had observed upon the subject. And I would ask your Lordships, whether it does not betray the same spirit, the same disposition, which is imputed to them, as having actuated them and their ministers during the recent disturbances in Baraitch, Goruckpore and Benares—a disposition that, if their own object of ambition could not be obtained, all the rest of the country was nothing and should be sacrificed to it? Was it the angry and intemperate expression of a letter only? No! my Lords, it was followed up by acts. It is stated, I find, in the printed Evidence, page 808, in a letter from the Resident upon the subject, that her chief agent, Behar Ali Khan—the person, your Lordships well remember, whose adopted son commanded at Tanda when Captain Gordon attempted to cross the nala at that place—her chief agent, Behar Ali Khan, marched a considerable force into Nawabgunge—that is one of her jagirs—declaring that,

Behar Ali Khan threatens to lay waste the country of Goonda.

6 MAY 1793. if any attempt was made to resume it, he would lay the whole country of Goonda waste. And then he states, that, if some stop is not immediately put to it, it appears but too certain that she will light a flame throughout these provinces which, if not difficult to extinguish, will at least put a heavy bar to the Company's collections here.

Further resistance to the orders of the Wazir.

My Lords, in another letter, in page 818, from the Resident, of the 3rd of January, 1783, is stated what force it may be necessary to employ against the agents of the Begums—

"who, I understand, have all received the most positive injunctions to oppose, by every means in their power, the execution of the Vizier's orders respecting the jaghires."

My Lords, there is another letter, in pages 805, 806 and 807. And this letter your Lordships will find to be a material one upon another account. It is from the Resident, dated the 19th of September, 1781, addressed to Mr. Hastings:—

He is compelled to apply to Col. Morgan for assistance.

"The Nabob Vizier having appointed an aumil to take charge of the Begum's jaghires, she had, it appears, prepared a large body of troops with a supposed design to resist him. A violent and threatening letter, which I have just received from the Begum, would seem to leave no doubt of her intentions to support the already declared licentiousness of her servants, in opposing the Nabob's orders. I have, therefore, been obliged to join my solicitations to the Vizier's for obtaining a regiment from Colonel Morgan, to support the aumil in the execution of his excellency's commands; and I may add that, unless my judgment far misleads me, we shall be in want of still further aid before the measures of resuming the jaghires shall be fully established, and the country restored to that tranquillity and subordination which it enjoyed before the contagion spread by Cheyt Sing's machinations."

Major Naylor obstructed in his return to Fyzabad.

My Lords, it appears also, from the account given by Major Naylor, that the force actually sent there was absolutely necessary for the purpose; and that, upon his march, Major Naylor, after he had been in the jagir, when he was returning by order to Fyzabad, was obstructed in his passage by the Begum's orders, who removed the boats for the purpose of preventing his march; obstructing him in exactly the same way as Captain Gordon was obstructed. It was in consequence of the application I have stated, representing the necessity of a military force, that Mr. Hastings did what was made matter of imputation upon him: he issued an order for a military force to march, for the purpose of supporting the Nawab's orders. Your Lordships will find this stated in the twenty-third paragraph of this Article:—

Order for the march of troops to the Wazir's aid.

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"That, in order to enable him the better to carry the same violent and unjust measures into execution, he did order a large force to be marched into the territories of the said Vizier,"—and that is stated to be—"without any request from him, the said Nabob, and contrary to his declared and avowed desire and inclination."

Now, my Lords, I cannot help complaining a little of that part of the Charge, which certainly conveys an idea to your Lordships that the force was ordered and was sent; because, when it is stated, as a matter of imputation upon Mr. Hastings, that he ordered the force to march for the purpose, I think it would have been as well if it had been stated [with respect to] the force which is stated to have been ordered without the Nawab's authority, and contrary to his declared and avowed desire and inclination—which circumstance of its being contrary to his desire and inclination is disclosed by these documents—that, though Mr. Hastings actually ordered it, yet, when he understood that the force was greater than the Nawab wished for, the result was that the order was countermanded, and the force not sent! It is stated to have been without any request; and an idea is held forth to your Lordships of an express disapprobation having preceded the order, when it was, in truth, in consequence of an intimation from the Nawab and Mr. Middleton that that force was wanted; and it is perfectly well known that, when the Nawab did object to it, that order was countermanded.

Withdrawn at the desire of the Nawab.

In order to show that it was countermanded, I will refer your Lordships to the printed Evidence, page 2077. Not that I think it can fairly be considered as matter of imputation on Mr. Hastings, when he had been told by Mr. Middleton that one regiment was wanting, and that, unless his judgment far misled him, we should be in want of still further aid—I say, I think it would not have been matter of fair imputation upon Mr. Hastings, that he ordered two regiments to march; or that, having recently experienced the ill consequences that might arise from postponing any active military aid at the first beginning of commotions, he should have sent a sufficient force to prevent any danger. But I only say here that, if that was to be stated as a matter of imputation, the whole truth should have been stated; and not that stated which certainly conveys a very erroneous representation of the transaction.

Prudence of the measure.

Mr. Hastings then writes the orders, that are set forth *verbatim* in the twenty-third paragraph, by his letter of the 26th of December, 1781; and it is stated that the sending these orders was a crime; that they were calculated to

Orders forwarded by Mr. Hastings to Mr. Middleton.

6 May 1793. stimulate Mr. Middleton to every degree of severity and outrage; and every expression is selected from them that can possibly be made to represent this effect intended by Mr. Hastings—to urge and stimulate outrage unnecessary for the execution of these measures.

I will ask your Lordships whether, after three months had elapsed without this measure being carried into execution, in the month of December—it having been settled that it was to be done in the month of September—whether, after three months had elapsed, after all this disposition had been shown of violence and resistance on the part of the Begum, it was an act of unnecessary severity and outrage, to desire that, when the two measures were to be carried into execution, Mr. Middleton would himself be at the execution of them? He says, this tardiness, and the opposition prepared to the only decided act yet undertaken, had a bad appearance:—

The written orders.

"I approve of the Nabob's resolutions to deprive the Begums [of their ill-employed treasures. In both services it must be your care to prevent an abuse of the powers given to those that are employed in them.] You yourself ought to be personally present. You must not allow"—

And here are the expressions that are relied upon against us, but which plainly refer to all the antecedent conduct of the Begums, in which by every practised art the performance of orders was evaded, and by every violence attempted to be resisted; he says:—

"You must not allow any negotiations or forbearance, but must prosecute both services until the Begums are at the entire mercy of the Nabob, their jagheers in the quiet possession of his aumils, and their wealth in such charge as may secure it against private embezzlement."*

My Lords, take it altogether—what is the object? To prosecute both the services. At the entire mercy of whom? Of the sovereign and the son! Of him who ought to have the power; whose power is resisted by a subject to him. That enough should be done to prevent a resistance by military force against the sovereign going to resume the right; but you are to take care that there be no abuse of the power. And in what respect are they to be reduced to entire mercy? Only with a view to the two measures—for it is so explained; that is to say, the jagirs in possession of the aumils; and "their wealth in such charge as may secure it from private embezzlement." Is there intended any personal

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* Printed in the "Minutes of the Evidence," p. 807.

violence—any severity, against them? It is directed against their property; and to prevent any force being used, or stratagem employed, to defeat the execution of the two measures, by the force that was necessary for that purpose. 6 May 1793

Mischievous consequences of disobeying them.

Then was this an unnecessary precaution? What was the consequence? In every instance in which these orders were departed from, your Lordships will find the mischief that resulted from it. Negotiation, in disobedience to these orders, was begun. What was the result? The result, as Mr. Hastings well said, that was naturally to be expected from it from such persons. I will read to your Lordships what is stated by those who disobeyed those orders; what they themselves do state to have been the result of that disobedience. It is in page 819 of the printed Minutes.

Mr. Middleton's account of the seizure of the Kella at Fyzabad.

It is stated, in giving an account of what passed at Fyzabad, after the arrival of Mr. Middleton and the Nawab at that place, for the purpose of calling upon the Begum for the restoration to him of the personal property that belonged to him—upon his arrival there, it is stated—

Contemplated resistance of the Begum.

"The only use the two leading eunuchs under the Bow Begum made of the delay was to assemble and call in armed men from all quarters, which, when united with the large force already in the town under their direction, would in all probability have brought the matter to a much more severe and arduous test than it at present could admit of. I found myself necessitated to take the most immediate and decisive interference which the force with me was capable of; and accordingly, having the Nabob's written requisition, marched the 23rd regiment, under the command of Major Naylor, with a detachment of his excellency's own troops, against the kella."

He then states that—

Prevented by arrival of British troops.

Surrender of Behar and Jewar Ali Khan.

"He had the happiness to succeed in putting the Nabob's party in possession of it without any effusion of blood; the armed men retiring from it on the approach of our troops, and drawing up with their guns in a large broad street before the house of the old Begum, to which the Bow Begum and her two principal eunuchs had retired the preceding evening. This effected, the Nabob issued his peremptory orders for the immediate departure of all armed men, excepting his own troops, beyond the precincts of the town, threatening them with an instant attack if they disobeyed. This order"—he says—"after many evasions, was promised to be complied with; and the two eunuchs, Behar and Jewar Ali Khan, at the same time coming in and delivering themselves into the Nabob's custody, the armed men, amounting to between 3,000 and 4,000, evacuated the town and dispersed. I have since learnt that, had the Nabob's troops alone attempted the seizure of the kella, a very desperate resistance was resolved upon; which appeared very probable from the state in which the armed men were found, being the preceding evening furnished with a large store of ammunition, and now drawn up in regular order, with loaded pieces and their matches lighted. But they

6 May 1793. were prudent enough to think themselves unequal to the united efforts of his Excellency's troops supported by an English regiment; and by this conviction much mischief has happily been prevented."

Major Naylor's account of the affair.

My Lords, by another letter of Major Naylor's, he states—

"After my arrival, a couple of days passed in negotiation, but without effect; and the party in the town collecting and hourly gaining strength; at length, after mature deliberation, it was resolved that I should, with my regiment and four guns, storm the town; which I effected on the 12th in the morning. I very soon got possession of the kella in which is the palace; and, as there were not only several gates, but openings in the walls, as I entered on one side they escaped at the other. But shortly after the party returned again, headed by the two principal eunuchs."

And here I beg your Lordships will attend to what is the conduct of these very ministers, under the eye of the Begums themselves, at this time. In what way do they act, after they are told of the Nawab's orders and the object of them? He says:—

"Shortly after, the party returned again, headed by the two principal eunuchs, Behar and Jewar Ali Khan, and drew up opposite and within sixty yards of one of my posts with three guns, and added the most aggravated behaviour."

He then states that, by the moderate and lenient measures that he pursued, he, at length, prevailed upon those persons to surrender and give up, apprising them that resistance would be fruitless. And by that means alone was this attack, which was threatened on the part of those persons, and endeavoured to be provoked by them by the most aggravated behaviour—drawing up within sixty yards and in regular array, with their guns presented to them—in that way was it that an actual engagement was prevented between the troops of the Nawab, aided by the Company, and the troops of the Begums. At length, it is stated that the Begum finally agreed to surrender to the Nawab the treasures of his late father, the Nawab Suja-ud-Dowla—that is stated in page 821—which she had hitherto retained in her possession.

The Begum agrees to surrender the treasure to the Nawab.

Now, it is made matter of imputation upon Mr. Hastings, that, in truth, he complained of this short delay; and it is stated in the Article as if he had regretted that a delay passed at that period of time; and it was represented, I think, by the honourable Manager who summed up this Charge, that Mr. Hastings was fondly wishing for a little providential slaughter, panting for bloodshed, and regretting and lamenting that it had not actually taken place. Now, is that a fair construction to be put upon the conduct and upon

Inhumanity imputed to Mr. Hastings.

the observations of Mr. Hastings? He complained of the delay! Why?— 6 May 1793.

"Because"—says he—"it had the natural effect of collecting a force and endangering bloodshed—endangering all that mischief which our object was to prevent."

Is it fair, and is it not sporting with the feelings of the gentleman at your Lordships' bar, to have him held up as a man thirsting for blood, and anxiously wishing for it as a justification of his measures, when the fair interpretation of all his orders and his conduct was to produce a contrary effect; to execute the measures, but to execute them in a mode that must prevent any mischief being the result of them?

Justice of the measure of seizing the treasure.

What, at length, was the result? What this act of horrid cruelty, surpassing all that ever existed in the history of the depravity of man from the time of original sin?* What is this act of horror and cruelty? Why, that, at length, after her own resistance had been unsuccessful, after the troops of the Wazir of the country had actually succeeded in the restoration of his right, she then agrees in the terms that I have stated to your Lordships; she agrees to surrender to the Nawab the treasures of his late father, the Nawab, which she had hitherto retained in her possession. Where is the mighty horror and cruelty of this—that she, who had originally embezzled 2,000,000*l.* of the public money, without the least shadow of right to it—who had only given up one quarter part of it—is compelled at length, in the year 1782, to surrender up another fourth part; for that was all she delivered up then by agreement with the Nawab, in consequence of what I have stated to your Lordships?

She agrees to give up fifty-five lacs more of the property belonging to the Nawab, [which] added to the forty-five, or thereabouts, before given, make a total of about 1,000,000*l.*, the whole of which was the right of the Nawab. Here, then, at length, is the horror and cruelty—that those persons should be driven to do an act of justice to their son and grandson; to give up money, to one single rupee of which they had not a right; to give one moiety, retaining to this hour another in her possession, excepting only such part of it as was used to promote commotions in the Nawab's country and ours. All the rest they have still in their possession; for it is stated, and I proved originally, by the account of Mr. Bristow

* Referring to expressions of Mr. Sheridan; see vol. I., p. 677.

6 May 1793. at the time, that, at the least, it amounted to the sum that I have stated. And now, at length, it appears that all that has actually been restored to the Nawab, though he demanded more, though he knew he had a right to more, though he conceived uniformly that the treasure still belonged to him—he has hitherto only actually obtained from those persons one moiety of the right that belongs to him!

Now I would beg to ask, where is the mighty horror and cruelty of this act? Mr. Bristow, in 1775, without orders, by negotiation produced one quarter. Mr. Middleton, in 1782, got another quarter of what belonged to the Nawab. One is a very right act, and the other is a horrid and cruel act! The Resident obtained it for the Nawab. If it did not belong to the Nawab, it was wrong to obtain it for him; if it did belong to the Nawab, he ought to have obtained the whole. A remaining quarter part was, after being detained some years in her custody, actually got—got by force, because she resisted by force; and, if it was right for Mr. Bristow to obtain this money in 1775, was it wrong for Mr. Middleton to obtain it under the orders of the Board? with this difference—that, when Mr. Bristow obtained his portion, there had not happened that experience which showed the absolute necessity of restoring to the Nawab what belonged to him, on account of the bad use that had been made of the property subsequent to the act of Mr. Bristow; and also there had been this additional circumstance of the actual necessity that there was for the Nawab being in possession of those resources that were to retrieve his affairs and the Company's.

My Lords, I say, therefore, that, taking the whole of it together, I cannot see where is the mighty horror and cruelty of this act—taking it from the first to the last. If your Lordships believe that the Nawab had originally a clear right to the whole of the money—if your Lordships believe that that treaty, which created a temporary bar, was unjustly obtained from the Nawab in the way I have stated, being obtained in the course of his distress and difficulty, under the circumstances I have before stated, but which being once made was faithfully kept on our part and perfidiously broken on theirs—can it be considered as an act of horror and cruelty that, after all that, a remaining fourth part was obtained from the Nawab at this period?

With respect to the other measure, I have shown your

Lordships that, in truth, it was nothing but a commutation of money for land, in a way very conformable to the constitution of the country; that it was the exercise of a constitutional power, in the instance of persons in whom, on every account, it is extremely inconvenient to leave a power of that sort, and where recent experience had shown that that sort of power, left in those hands, was liable to great abuse. This was all the cruelty and the horror exercised towards these persons. Your Lordships will now judge, from the acts done by them and the acts done by the British Government, on which side the imputation of violence, outrage and perfidy, fairly belongs. It is stated as a matter of aggravation to this Charge, truly, the relation in which the Nawab stood to this person. Yes, it is matter of great aggravation that the Nawab should take from his mother his own right; but it is perfectly natural, and in the ordinary course of things, that the mother should deprive the Nawab of his right, and should employ it to his destruction! That is the exercise of maternal affection and piety—to take from him the money when his throne and his life were in danger, and, when there were distresses and difficulty in his country, to employ it against him: that is the regular course of nature and affords no sort of aggravation to her conduct! And, forsooth, it is cruelty and unnatural conduct on the part of the son, not to suffer her violence to have its full effect, but to take any measure to resist, impede or prevent, it! Another matter of aggravation is the scandalous evidence that was obtained upon the subject through the medium of Sir Elijah Impey. I have already stated the object of that act; the person who did it; and the nature of it. I am perfectly at a loss to conceive how, if it was thought necessary or right to authenticate facts there for the purpose of information to those at home, it was any very great aggravation, that recourse should be had to the chief justice of the country to have the affidavits taken before him. If the affidavits had been taken before a clerk, a man in no judicial office, then it would be perfectly right; but to take them before a chief justice, then it is matter of great aggravation and a highly improper thing! My Lords, all the object of that information was, as I have stated, not for the purpose of justifying Mr. Hastings' conduct upon the subject, but for the purpose of information here at home; to be authenticated in that mode and in that way which Mr. Hastings was advised—whether rightly or not, belongs

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The resumption of the jagirs equally justifiable.

Filial and maternal obligations.

Affidavits sworn before Sir Elijah Impey.

6 MAY 1793. to the gentleman who has in a manly way avowed the act, and said it was his and for which he is responsible. It is impossible that the mode in which it was authenticated can make any part of the conduct wrong.

Mr. Hastings not responsible for the act.

Treatment of Behar and Jewar Ali Khan.

There is another part of the subject of the execution of the measures which it is necessary for me to advert to: I mean, the treatment of the ministers of the Begums. After the Begums had made a solemn agreement with the Nawab to deliver up fifty-five lacs, remaining of his property, and after not having performed it, but leaving a balance, I think, of about eleven lacs unpaid—after that sum was left unpaid, recourse was had to exactly the same means that were had recourse to by the same persons, for the same object most manifestly, in the years 1775 and 1776. She having the full means before, and the full means now, to pay the whole, raised pretensions of inability now, just as was done before, and, exactly as was done from the moment of her husband's death, [she declared] that she had not a single rupee. Which proves a vast deal too much to your Lordships, if it proves any thing; because she declared, when unquestionably she had 2,000,000*l.* sterling in her possession, her absolute inability to pay a single rupee; and therefore her declarations of inability, which is all the evidence to prove her inability, after there was one million remaining of the two, seem to me not intitled to great weight upon the subject.

But, my Lords, her ministers agreed to pay, within a month, the balance. The Nawab left Fyzabad with a solemn promise that the money should be paid. That promise was broken. It was broken by those persons who had entered into the obligations that I have stated, and in whose custody was found all the concealed wealth of the late Nawab. It was got from their houses and delivered up to the Nawab. That they knew where the remainder of it was that belonged to the Nawab there can be no doubt. That they had the ample means of discharging those securities is in evidence before your Lordships. That the Begum had abundant means to pay it there can be no question.

Yet, my Lords, it is made a dreadful crime, that those two persons, whom your Lordships have seen to have been actively engaged, in Baraitch and Goruckpore and in Fyzabad, in endeavouring to effectuate the destruction of the English—whose letters were circulated, inviting the people to take up arms and to destroy the British troops—whose proclamations were issued, by their authority, offering rewards

Their conduct in reference to the rebellion.

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for the heads of the British officers and troops—who had in Fyzabad excited levies for Cheyt Sing, a rebel in open arms—who had gone into the chauk and the market-place, calling upon every body to take up arms and march to the standard of Cheyt Sing—who had, in that place, excited those who destroyed the troops and the servants that were there, drove them from the place, and received and patronised the rebels and all who afforded them any aid in that place—we are to have every sort of commiseration and pity for those men; we are to weigh every little restraint that is exercised towards them, and all the public feelings are to be excited towards these unfortunate ministers, as they are called! Then, all the indignity that falls upon them operates wholly upon those that employ them. Though those that employed them were not responsible for their acts, yet they are affected wholly by every indignity done to them. The public feelings are to be worked up for every restraint laid upon them, to compel the execution of their own agreement, having in their own possession the means to acquit themselves of that obligation whenever they chose!

Attempts to excite a sympathy in their favour.

I will not detain your Lordships with following the evidence upon all that part of the subject. It is in proof before your Lordships, that all that was actually done was done not with the authority or the knowledge of Mr. Hastings. I am aware Mr. Hastings was informed by letter, in March, 1782, that these persons were under restraints, save and except irons, for the payment of the balance. From that period, I defy them to produce a single document that communicated to Mr. Hastings any thing that passed from March 1782 to December, when these men were released. It is in evidence by Mr. Middleton that he never did communicate it to Mr. Hastings.

Their imprisonment unauthorised by Mr. Hastings.

Here again, with the same consistency that the accusers of Mr. Hastings have observed throughout, your Lordships are told that all presumptions are to be taken up against Mr. Hastings, though none for him; and, after it has been argued that all that happened in Baraitch and Goruckpore must necessarily and naturally be brought to the knowledge of Mr. Hastings, all that is proved actually to have been communicated to him your Lordships are to believe that he was perfectly ignorant of, for all purposes of his defence; and yet your Lordships are, at the same time, to adopt this presumption against evidence—that Mr. Hastings must have been cognisant of all that happened at Lucknow at this

Inconsistency of the Managers.

6 MAY 1793. time! My Lords, in page 381, I find the Managers say that their evidence is to prove it perfectly impossible but that Mr. Hastings must have been apprised of all the transactions going on at Lucknow, in the years 1781 and 1782. It is impossible that he could not know every thing that is to make as matter of accusation against him, that is done by any agent; but it is absolutely impossible for him actually to know what, at the same period of time, is going on in that same country of Oude, in 1781 and 1782, which, for all the purposes of his defence, your Lordships have been told, he is to be supposed entirely ignorant of!

Exaggeration of the restraints imposed upon the ministers.

With respect to all the detail of particulars towards those persons, I shall only observe—not denying that it is a restraint to be in custody, not denying that it is a restraint and indignity to have irons put upon them—but I will say that all that was suffered by these persons has been greatly exaggerated. They were loaded with irons, we are told, when the witnesses have described that they were little more than the ornaments which the women wear about their legs. Thrown into prison, when it is in evidence that their prison was their own houses—a spacious and elegant house, first of Behar, then of Jewar Ali Khan, with every accommodation and convenience afforded them, attended by forty or fifty servants. That they had every attention and accommodation given them at that period of time, is in proof by the officers who were stationed there at the time. My Lords, such were the particular severity and hardships that were suffered by these men, when they could at any time have redeemed themselves by their own act; for one of them is believed by the witness to have a kror of rupees, that is 1,000,000*l.* sterling. At that time, when they had broken their agreement, and were told that that was the consequence that was to follow upon it, it is to be made a matter of great criminality that such was the situation of these men!

Their ability to procure their release.

Approval of the treatment imputed to Mr. Hastings.

We are told that Mr. Hastings had afterwards the knowledge of what had been done, and, being informed of it, that he approved of it and directed the renewal of it. My Lords, I deny it. I say that Mr. Hastings, by the letter of December, 1782, from Mr. Bristow, was informed that the restraints were over and the battalion was withdrawn; the Nawab having with difficulty been prevailed upon to consent to it. The letter of the 3d of March, 1783, which was afterwards written, shows manifestly that Mr. Hastings was

not apprised of what had actually been done—the particular nature of the restraints that had been used towards those persons—because I observe that letter of March, 1783, desires to inquire what measures had been used; and then, after it was perfectly known that the battalion was withdrawn, it only directs the Nawab to use the most effectual means for recovering the payment of what was due to him. That letter is in the printed Evidence, page 903. It was sent by the unanimous resolution of the whole Board, consisting of Mr. Hastings, Sir Eyre Coote, Mr. Wheler, Mr. Macpherson and Mr. Stables. And I think here I am warranted in saying that, when they merely desired that the Nawab would use the most effectual means, and— 6 May 1793.

"if necessary, that you recommend it to the Vizier to enforce the most effectual means for recovering his balance,"—

it was not, and could not be, their intention that any improper means, any severe restraints, should be employed for the recovery of his balance.

If it was so intended by Mr. Hastings, it was so intended by all. They have called Mr. Stables, who says that that was not his meaning; and the honourable Managers give him extraordinary credit and merit for it. Then, by what fair argument can this letter be used against Mr. Hastings, who did no more than Mr. Stables did? Can he be supposed to have meant by that letter to enforce a renewal of restraints, when they hold up with panegyric Mr. Stables for not having intended any such thing? Then by what chemical analysis are we to distinguish one from the other? The letter imports one thing to one—another to another! Mr. Hastings means by it all that is cruel and bad: Mr. Stables means by it all that is humane, merciful and benevolent! The whole Board responsible.

My Lords, there is one circumstance stated with respect to a letter of the 25th of December, written by Mr. Hastings, in which he communicates to the Board the necessity that he had been under of ordering that force, which he is accused for having ordered, to the relief of the Nawab. And here, my Lords, I must request the favour of your Lordships' attention, for a moment, to a subject which has been made of some little importance, from the very extraordinary treatment that Mr. Hastings received at your Lordships' bar. I remember that one of the honourable Managers, in addressing your Lordships upon this subject, stated that the letter of the 29th of November, 1781, was made with a false date, and that Mr. Hastings was guilty—an expression Falsification of dates imputed to Mr. Hastings.

6 MAY 1793. that I have not often heard made use of in any court of justice towards anybody—that Mr. Hastings was guilty of a lie!* My Lords, when these sort of expressions are used, surely I do not ask too much of your Lordships' honourable and liberal feelings, to expect that such an assertion should be grounded upon strong proof—to be quite sure that, at least, you are well founded in fact, when such an assertion is made.

My Lords, I cannot think it to be matter of sport. These sort of imputations play upon the feelings. They are heard in a crowded audience. They carry out into the world an imputation on Mr. Hastings as an infamous liar. Such an imputation ought to be clearly substantiated. What will be the result if it should be found that it was a very rash inference indeed; that the truth rested with Mr. Hastings, the mistake with the honourable Manager?

I will state to your Lordships the evidence. And here, if I were to try the conduct against Mr. Hastings by the test and by the criterion by which every act, and every letter, and every date, is tried on his part, what would be the inferences drawn against those who manage this prosecution? My Lords, I find it, in several instances, asserted positively that the letter of the 25th of December, 1781, which I have just stated, was the first communication given to the Board of the conduct of the Begums, during the rebellion of Cheyt Sing. I will beg your Lordships' attention to that subject: you will find it, in three or four different places, positively asserted that it was so. First, in page 594:—

"The Managers for the Commons acquainted the House they would next prove that Mr. Hastings pleaded want of time, for not having at once informed the Board of the extraordinary circumstances of the disaffection and rebellion of the Begums; that he, during all that time, corresponded with them upon every other subject; and that, in his Narrative, he dated letters as if they had been written at the time dated—particularly, a letter of the 9th of November, 1781; whereas the Narrative was not finished professedly till the 31st of December, 1781, and not sent till the 20th of January following."

This is making him date letters as if written at the time dated.

In page 597, there is a more pointed assertion of it:—

"The Managers for the Commons acquainted the House they would next produce a letter from Mr. Hastings to the Board at Calcutta, dated the 25th of December, 1781, in which, for the first time, the Defendant mentioned the rebellion and treason of the Begums, on account of which he had withdrawn the Company's guarantee upon the 19th of September preceding."

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* See the Speech of Mr. Adam, *suprà*, vol. I. p. 406.

There it is positively stated that the 25th of December was the first communication. 6 May 1793.

Then again, in page 599:—

"The Managers for the Commons acquaint the House they would next read a short letter from the Defendant to the Board at Calcutta of the 31st of December, when the Defendant was supposed to have sent the Benares Narrative, and which included for the first time the letter of the 29th of November last produced."

Then again, it is stated, in page 799:—

"The Managers for the Commons acquainted the House they wished next to ascertain a fact respecting the date of a letter in the Benares Narrative, purporting to be written on the 29th of November, 1781, to prove that no such letter was written at that time, nor received or entered upon the consultations at Calcutta."

Here then I have shown your Lordships in how many instances this proposition is stated. It is certainly very natural that an inference might be drawn from its not appearing on the consultations at the time, that the letter had not been sent down at the time; and I beg that I may not be understood as imputing anything upon that subject. But everybody conversant with the consultations knows that letters do not appear upon the consultations at the time they bear date, owing to a hundred causes; and, therefore, instantly from thence, not only to conclude that a date as stated by a gentleman is a fabricated date, but to state that it is a lie—surely there ought to be premises a little better founded before such inferences are made, and such expressions used in a court of justice!

Irregularity in entering letters upon the consultations.

But it happens that we have not left [the proof of the truth] defective. If the honourable Managers had examined any witnesses upon the subject—if they had examined the secretary at the time, to know whether the fact was what they asserted and not what Mr. Hastings asserted, but which he is stated to have asserted with falsehood—if they had examined Mr. Auriol, he would have told them what the fact was.

Mr. Auriol has told your Lordships upon oath what it was:—that Mr. Hastings spoke truly; that the date is perfectly correct; that the letter of the 29th of November was sent in due course to the Board. He is asked:—

Evidence of Mr. Auriol respecting the letter of the 29th of November.

"Do you remember any letter being received from Mr. Hastings, dated the 29th of November, 1781?"—printed Evidence page 2005—"I would beg leave to ask if the question relates to a letter containing a treaty with the Nabob Azoph ul Dowlah?"

Upon telling him it did, he says:—

"That letter, I believe, was received in course at the Presidency by

6 May 1793. the members of the Board to whom it was addressed. I remember its being brought to the Board. It was received in course at Calcutta by the members of the Board to whom it was addressed. I remember seeing it in the Council a considerable time before the sailing of the Swallow packet, which, I believe, sailed about the end of December. The letter remained in the possession of Sir John Macpherson. I applied to him for it repeatedly, that it might be entered upon the records and transmitted to Europe by the Swallow, but he did not deliver it to me. I believe he told me by note it was not necessary to send it by the Swallow, or something to that purpose. Afterwards, upon Mr. Hastings' return to Calcutta, I think, I mentioned to him that the letter had not been entered; and, as well as I can recollect, his answer was—that a duplicate came down with the Narrative, and that the entering, therefore, of the original was of no consequence: it would answer no purpose: the duplicate was annexed to the Narrative, which was entered of course. They were sent home to the court of Directors by the Nancy, I think."

Here it appears, therefore, in contradiction to three or four positive assertions, upon your Lordships' Minutes, that the letter of the 25th of December was the first communication—it appears now that a letter was sent a month before, directly communicating the same.

Vindication of Mr. Hastings' veracity.

I have said this for the vindication of Mr. Hastings' veracity; to show your Lordships upon this subject, in which an issue was joined in the way that I have stated, that Mr. Hastings had said nothing but what was true, and that the reflection cast upon him was entirely without foundation. I would only hope that, upon all these subjects, these rash inferences may not be drawn that impute criminal motives to a gentleman upon slight circumstances, and which, I am persuaded, would not have been drawn, if a general prejudice to the disadvantage of Mr. Hastings did not prevail, from an opinion of his being that sort of character which the honourable Manager has stated him to be. Then every little circumstance is picked up and imputed to the foulest motives. He has no credit given him for any one act of his life, but it is constantly referred to the foulest and the most wicked motive.

Alleged distress of the Begums.

My Lords, I have now, I believe, gone through all that part of the subject that relates to the Begums or their ministers, excepting with respect to the distress to which they were reduced. It is stated, that the Begums themselves were reduced to the utmost distress; that they were reduced to misery, degradation and want. Upon that subject I certainly will not detain your Lordships; because, first, there is no evidence adduced on the part of the prosecution to show that that was the consequence with respect to them; secondly, because all the evidence that has been adduced upon the

subject proves the contrary. First, by the calculation of Mr. Bristow, we show what the remaining sum in their possession actually was, after a moiety had been recovered; secondly, because Major Gilpin and all the witnesses upon the subject prove the contrary.

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Evidence to the contrary.

Mr. Bristow, in the year 1783, says that he is persuaded she will evade payment, but trusts to her hoards for support. That is the person that is supposed to be reduced to the utmost distress and want! All the witnesses upon the subject have no doubt at all that all the conduct of the Begums, at the time, representing poverty, was mere feint and pretence; that they had abundant means in their possession. And it cannot be necessary to go into any evidence upon the subject, when it appears that they were, that year, actually bringing into the town, for the purpose of opposing the Nawab's orders, at one time, from 3,000 to 4,000, and at another, from 7,000 to 8,000 men in arms against them; and, therefore, they could not be supposed to be in very great distress and want, when they could afford to keep up that body of troops.

Number of troops retained in their service.

Charge of cruelty in respect of the Khourd Mahal.

My Lords, I come now to a subject which has been much pressed against Mr. Hastings, which was calculated to produce a considerable impression to his disadvantage, and which, I fear, had for a time all that effect. I was somewhat relieved upon this subject, when I heard it declared, by the honourable Manager who summed up the evidence, that he "should think it an unworthy and pitiful mode of endeavouring to steal an interest to this cause, which we do not want, if the Commons of England had made in their Charge a recapitulation and a narrative of those inhumanities which must shock and disgust the heart of every man who hears them;—I should think it a mean and pitiful method of endeavouring to create a feeling in order to be beholden to that feeling in our cause, unless I could bring them directly home to the person we accuse." *

The honourable Manager, I presume, will not complain if I take him upon his own principles—if I examine this part of the Article upon that ground; and that it would, according to his representation of it, be, if I show it to be, as I trust I shall, perfectly unfounded, from beginning to end—a language that I should not venture to have applied to it—"an unworthy, a pitiful, mode of endeavouring to steal an interest to their cause!"

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* See Mr. Sheridan's Speech; *supra*, vol I. p. 694.

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My Lords, I did imagine, when that was stated, that it was about to be followed by a direct acknowledgment of what was the result of the evidence upon the subject. All the evidence upon this part of the case—the distresses of the Khourd Mahal—is the evidence adduced on the part of the prosecution: we have offered none for the Defendant. The evidence is all on the part of the prosecution, and was before your Lordships at the time of this declaration. I did, therefore, expect, when these manly sentiments were avowed, that we should have had a direct disavowal of what had been proved to be false, from beginning to end. I confess I was much astonished, after that avowal, to hear the honourable Manager disclaiming any comment upon the distresses, but taking considerable merit to himself for not doing more than reading those piteous letters that describe them. And he will pardon me, if I should entertain some doubt whether even all his eloquence could describe them in terms more calculated to produce an impression upon the public feelings, to the disadvantage of Mr. Hastings, than the bare perusal of those letters. I cannot think, therefore, we are much indebted to him for forbearing to comment here, having said that reflections had been made for comments elsewhere upon the subject—I cannot think we are much indebted to him for that forbearance, if I should show your Lordships, as I trust I shall very shortly, that all this part of the Charge is inserted—I am persuaded it could not be with the knowledge that it had no application—but owing to some extraordinary mistake. All this part of the Charge has just as much application to this subject as if they had related in detail all the horrid barbarities of the 1st and 2nd of September, in a neighbouring kingdom. They had just as much to do with the conduct of Mr. Hastings as anything that is here stated.

No evidence adduced on the part of the Defendant.

Groundlessness of the Charge.

The evidence upon this subject is the testimony of two gentlemen who were present and relate the circumstances—Captain Jacques, who was at Fyzabad, and Major Gilpin, two witnesses examined on the part of the prosecution. Captain Jacques was examined, I believe, for the first time. Major Gilpin had, as appears by your Lordships' Minutes, been examined in the House of Commons. I dare say it was not because it was known what he would prove upon the subject—I am sure it could not be owing to that—but the fact was that, with respect to Major Gilpin, who had been examined in the House of Commons, a considerable

The evidence of Capt. Jacques and Major Gilpin.

degree of reluctance was expressed to bringing him forward as a witness upon the subject. 6 MAY 1793.

My Lords, it appears by the printed Evidence, page 905, that Major Gilpin had been examined in the House of Commons. It appears by the printed Evidence, page 872, that some little struggle and contest between the honourable Manager and the Counsel for the Defendant took place, the one endeavouring to reduce them to the necessity of calling Major Gilpin, the prosecutor, on his part, endeavouring to bring the letter of Major Gilpin, and not to produce his oral testimony. It appears also, by the printed Evidence, page 872, that the prosecutor was in possession of the private letters of both these gentlemen. They are in the Letter Book of Mr. Middleton; and there they appear, relating the circumstances. The letters, the written evidence and the oral testimony, of these two gentlemen contain all the evidence respecting it.

Unwillingness of the Managers to call Major Gilpin.

Now, my Lords, what is the Charge? I must request the favour of your Lordships particularly to attend to this most extraordinary paragraph—the 25th paragraph—in which your Lordships will find such a compound—such a mixture—of various persons, dates, places, things, jumbled all together in such a way, and at last attempted to be imputed to Mr. Hastings, as to make it very difficult to unravel and to disentangle all the perplexities of that paragraph, and requiring all your Lordships' attention to separate what part belongs to one person and what to another. Where chronolgy is disregarded, and transactions in the year 1782 are mixed with transactions in 1784—where pieces of letters are mixed with a paper of intelligence without date—where letters of Mr. Hastings, written in the year 1782, are made expressive of confirmation of what did not happen till 1784—and where there is such perplexity, jumble and mystery, it is made extremely difficult to unravel it, and to make the subject plain, clear and neat, before your Lordships. But we are where that cannot succeed. I have taken the liberty of stating distinctly what belongs to the Begums, what to the ministers; and to separate that from it. Your Lordships will now see what belongs to the distresses of the Khourd Mahal, which is a perfectly distinct subject.

Confusion in the Charge.

It is stated in the Charge, that the conduct and acts of Mr. Hastings were the means of reducing the mother and grandmother to the utmost distress; and then, after describing the transactions of Mr. Hastings, which are the two

6 MAY 1793. measures I have stated, all the acts that I have mentioned, it states, were—

> "the means of reducing the women and children of the late Nabob, Sujah ul Dowlah, dependent upon the said Begums, by want of the mere necessaries of life, to break through all the principles of local decorum which constitute the character of the female sex in that part of the world"—

Here your Lordships will see the laboured detail:—

> "and, after fruitless supplications and shrieks of famine, to endeavour to break the enclosure of the palace and force their way to the market place, in order to beg for bread; and, finally, to submit to the extremity of disgrace and degradation by exposing themselves to public view, with the starving children of their late sovereign, the brothers and sisters of the reigning prince; in which attempt they were attacked by the sepoys armed with bludgeons, and driven back by blows into the palace. For all which circumstances of cruelty and barbarity the said Warren Hastings is in a peculiar manner responsible; many, if not most of the same, being the necessary and inevitable consequences of the illegal powers assumed by the said Warren Hastings, and the atrocious and unjust orders given by him. And, many of the said severities and cruelties being made known to him, he, the said Warren Hastings, although informed of the same, did take no steps for the redress of the said cruelties, but, on the contrary, did declare the same to be justly merited, and did stimulate and encourage his agents and others to continue and enforce the same."

Now, my Lords, here are distinct propositions; and yet, I think, I can discover, in the very wording, strong internal marks that those that are introduced in the middle of the paragraph could not possibly be applied to any part of that subject, because it is said—"many, if not most of the same"—"And the said Warren Hastings, being informed of the same, did take no steps for the redress of the said cruelties." Your Lordships will find those expressions picked out that belong to the Begums, and have no application whatever to those circumstances that are here stated, but are put at the tail of them, to induce a belief that Mr. Hastings, being made acquainted with those barbarities, took no steps to prevent them, but encouraged his agents and others to continue and enforce these cruelties. My Lords, I therefore hope it cannot be said, by and by, that this paragraph is satisfied with [supported by?] any reference to what I have already stated of the letters that apply upon the subject of the Begums, if I show that this business of the Khourd Mahal is of perfectly a distinct nature. It is said:—first, he was the author of them; secondly, he was informed of them and approved of them; thirdly, he enforced and directed the renewal of them. Not one is fact: but directly the

contrary is proved by all the witnesses. He was not the author of them! He was not informed of them! He never did enforce the continuance of them! That appears by all the evidence, written and parol, upon the subject, produced by themselves. 6 MAY 1793.

Now, my Lords, in the first place, before I enter upon this subject, I will beg to advert to a very singular conduct on the part of the prosecution, as applied to this subject, in which, I think, the Charge itself, when they advert to these cruelties, has been in fact, though not in terms, abandoned; because they have, in fact, taken up, as your Lordships will find, another mode, in which they want to impute to Mr. Hastings a responsibility for what here took place.

Virtual abandonment of the charge of cruelty.

Your Lordships will, I am sure, recollect that this sort of charge has been attempted to be made against Mr. Hastings:—that, in an article of a treaty with the elder Begum, there was a stipulation that the Khourd Mahal should be regularly paid their tankhwahs; that the tankhwahs were not paid; and that Mr. Hastings ought to have enforced the payment of them, being responsibible so to do; *ergo*, it is a breach of treaty. My Lords, I will stop only a moment upon this, because I will not be drawn off from the consideration of what is the question to what is not the question. I shall only say, that the guarantee on the part of the British nation could never possibly be understood respecting the Khourd Mahal, which was inhabited by a great number of women of a certain description—that every time the Nawab does not pay a quarter's salary to his seraglio, there is a violation of British faith. It could never be understood to make the Resident dry nurse to a zanana. It could never be understood to have that extent—that every infringement of his domestic concerns was to be considered as a violation of a public treaty!

Non-application of the treaty to the domestic concerns of the Nawab.

"But that is not the charge: you are going off from it now. You find that the charge, as it is stated, must be ill founded. The charge here is, not that he was passive, that he was negligent in not sending the relief, but that he was active, that he was the cause, the approver, the enforcer, of their sufferings. Therefore, do not let us go off from the charge, for that is not the charge. We state Mr. Hastings to be the cause, the author, the encourager, and approver of it. Is that true or is it false?"

My Lords, it appears by all the evidence, in the first place, that the Khourd Mahal is distinguished from the

Description of the Khourd

6 May 1793. other zanana inhabited by the married princesses, which is called by the name of the Coss Mahal; that they are two distinct zananas, the one occupying the left side, the other the right of the palace, with a spacious garden between; and the two establishments are as distinct as if one was in that country and another in the Carnatic. The Khourd Mahal, the lesser zanana, contains in it all the persons who were placed there by the late Nawab or his father; and, being a particular description of persons, it appears that, in truth, in general, the Begums, who inhabited the other zanana, were averse to them and had no communication with them.

Mahal and the Coss Mahal.

In page 860, your Lordships will find that the Khourd Mahal derived all its support from the Nawab; that it was sustained out of the produce of the district of Sultanpoor, which was under the management of Lataffut Ali Khan. The amount of that was 40,000 rupees a year; and Lataffut Ali Khan told the witness, who has told it to your Lordships, that that was a distinct establishment, and that, when that money was regularly paid, there was an ample sufficiency for the purpose of maintaining the persons inhabiting the Khourd Mahal. It appears, therefore, positively, what was their source of support. In the next place, it is proved, negatively, that they derived no kind of support whatever from the Begums; and, therefore, that nothing that was done with respect to the finances of the Begums, their landed or their personal wealth—had they been stripped and reduced to distress—inasmuch as they derived no part of their support from the Begums, no diminution of the finances or resources of the Begums could have been productive of any effect whatever upon this distinct establishment. In the next place, it appears that the British Government had no kind of concern whatever in the regular payment of what was to go to the support of those persons. And, lastly, it appears, that all that actually was done by the British Government, or by any person acting under it, was to relieve those distresses which they are stated to have occasioned!

Distinct resources of the two establishments.

The support of the Khourd Mahal not dependent on the British Government.

I will refer your Lordships, in the first place, as to the description of it, to page 906 of the printed Evidence. Major Gilpin describes the situation in which the Khourd Mahal and the zanana were:—

> "The Khourd Mahal was on one side of a very spacious garden, and the Begum's palace was on the other, at a considerable distance. I cannot say exactly how wide it was, but there was no kind of connection whatever between the two."

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Captain Jacques proves the same, page 860. In the printed Evidence, page 870, your Lordships will find it stated that the district of Sultanpoor was assigned for the maintenance of the Khourd Mahal; that the sum of 40,000 rupees was allotted them for their maintenance, and was paid by the faujdar of Sultanpoor to Lataffut Ali Khan :—

The district of Sultanpoor assigned for the maintenance of the Khourd Mahal.

"Letaffit Ali Khan informed me, in the course of the conversation, at the time of their distresses, that, if this stipulated sum had been paid regularly, there never would have been any cause of complaint." "Whether Letaffit Ali Khan was in any respect subject to the order of the Begum or either of them?—"Not in the least, that ever I understood."

Major Gilpin, in the printed Evidence, page 887, being asked whether there was any intercourse between the Khourd Mahal and the Begums, says: —

"None that I know of." "Did the Begums in any manner contribute to the support of the Khourd Mhal?"—"They never did in the least during the time that I commanded at Fyzabad. I can only speak as to that period. I always understood they had an inveteracy against the women of the Khourd Mhal, even in Sujah Dowlah's lifetime." "Whether the seizure of the Begum's treasures or their jaghires could in any respect contribute to the distresses that were experienced by the Khourd Mhal?"—"I do not see that it could in any respect." "Do you know whether any measure in which the English were at all concerned could produce, or in any degree contribute to, those distresses?"—"I do not think that the interference of the English could have affected the establishment of the Khourd Mhal in any respect."

Ill feeling of the Begums towards the women of the Khourd Mahal.

Their distress not to be attributed to any measure of the English.

Captain Jacques' evidence is in pages 854 and 859 :—

"Who had the charge or superintendence of the Khourd Mhal during the time you were employed in this service?"—"Letaffit Ali Khan." "Who was he employed by, do you know?"—"I understood he was employed immediately under the Nabob: and the last day that I was here I deposed that Mr. Middleton or Mr. Johnson told me we had nothing, and could have nothing, to do with them, it being a particular business of the Nabob, that the English could not interfere with." "What was the condition and the situation of the people who resided within the Khourd Mhal?"—"A little time before Major Gilpin took the command, the people got upon the tops of the houses and complained and made a terrible noise, signifying they were in great distress for want of provisions, that they had disposed of the best part of their necessaries, and were then in a starving condition." "The question is—what was the description of the people who were in the Khourd Mhal; of what rank were they?"—"I always understood those were the Nabob's concubines; and that there were some of them who had children, and that they were also with them." "Did you understand they were persons of rank, or persons of low condition?"—"I have heard it said—but it is sheerly hearsay—that Sujah Dowlah, when he was going any where, if he saw any person that he thought was one he would wish for, his servants were employed and she was brought to this place where they were put. As to rank, whether high or low, I can say nothing about it." "Was there a difference between the rank

Evidence of Capt. Jacques.

Character of the women.

6 MAY 1793. and estimation in which the persons who inhabited the zenana were held, and those who inhabited the Khourd Mhal?"—"They are both called zenanas: one where the married princesses reside, and the other is where the concubines reside." "Consequently they were in a different estimation?"—"Clearly." "One you considered in a superior light as a part of the family, and the other in an inferior light?"—"Yes, surely; quite so." "By whom, or from what fund, was the expence of this Khourd Mhal defrayed?"—"I understood, both from the Resident and from Letaffit Ali Khan, that there was a district assigned for the maintenance of the Khourd Mhal, and the person who had the management of that was backwards in his payments; and I was always given to understand the fault was entirely his, or else the Nabob's for not compelling him to do his duty." "Whether the Begums had anything to do with supplying the maintenance of the Khourd Mhal?"—"Really I cannot pretend to say, but I never heard that they had." "Whether the placing those guards round the zenana in any manner caused or contributed to the distresses of the Khourd Mhal?"—"I cannot conceive they could in the least."

Distinction between the two zananas.

Cause of the distress.

Then he is asked:—

"Whether the Begums ever sent the women of the Khourd Mhal any relief during their distresses, or any messages to you respecting them, while you were in the command at Fyzabad?"—"What they might send it is impossible for me to know. They might send unknown to me: I never prevented people going in or out."

He was afterwards asked:—

"Do you know of any body having stopped or seized any thing—treasures or what else—from the Khourd Mhal?"—"I do not." "You never stopped any valuables; do I understand you right?"—"I never heard of any thing found in the Khourd Mhal that was seized."

Evidence of Mr. Middleton.

There is some testimony given by Mr. Middleton, in page 741, relative to this subject:—

"I know the expence of the Khourd Mhal, which was never paid by either of the Begums, was very inconsiderable."

I will only refer your Lordships to the whole evidence, for the purpose of proving that the whole concern belonged to the Nawab, and had no connection whatever with the Begums: and the two British officers who were there, Captain Jacques and Major Gilpin, positively declare upon their oath that everything that was done could have no possible effect, in any degree, in producing the distresses that took place at that time; next, in assigning what was the cause, that it entirely arose from a temporary negligence of the agent under the Nawab, in not having regularly paid that salary which, when paid, was amply sufficient for their maintenance.

Major Gilpin advances 1,000*l.* in aid.

It appears that Major Gilpin, in 1782, voluntarily, as an act of humanity, merely seeing the distresses these people

laboured under, supplied them with 10,000 rupees; that is, 1,000*l.* sterling. He communicated that to the Resident, Mr. Bristow, and he communicated it to the Nawab. What was the result? That the Nawab complained much of the interference in a matter of domestic concern; and he wrote Major Gilpin an angry letter for his interference upon the subject! It therefore is perfectly clear that nothing that was actually done at the time could possibly produce it; that it was not a matter in which the English could with any propriety or delicacy interfere; that it belonged altogether to the Nawab, and was the negligence entirely of his agent.

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Is rebuked by the Nawab.

Now then I would ask—whether the act of resuming the jagirs and resuming the treasures from the Begums could possibly have any operation or effect upon those distresses? The effect would rather be the contrary; because every thing that contributed to relieve the Nawab's finances, upon whom this establishment rested, would better enable him, if he chose it, to make all his payments regularly that were before irregularly made. It is enough for me to say, negatively, that it could not produce that effect; and, whatever effect it had, it was to enable these people to be better provided in future. But what is stated in the Article is not true—that these were the means of reducing the women and children to want, and so on; that that was the necessary and inevitable consequence of the acts imputed to Mr. Hastings. I have, therefore, shown your Lordships that, upon all that part of the case, the Charge is directly contradicted by all the evidence produced by themselves in support of it.

Contradiction of the Charge by the evidence.

In the next place—was Mr. Hastings acquainted with them? He was acquainted with them, they say; and, being acquainted with them, he took no steps for the redress of them, but, on the contrary, declared them to be well merited. Where is it proved that he was acquainted with them? When? How? By whom? At what time? By what persons? By what document? They are stated to have happened in the year 1782—some of them; but, with respect to them all that happened in the year 1782, your Lordships will see what is the misapplication of a document written by Mr. Hastings in the year 1782, and from whence this passage is quoted in the Article—"but, on the contrary, did declare the same to be justly merited." What did he declare to be justly merited? That passage, your Lordships will see, is a direct misapplication, as applied to this subject

Guilty knowledge of the distresses imputed to Mr. Hastings.

Perversion of his language.

6 MAY 1793. of the Khourd Mahal; for the expressions of Mr. Hastings apply entirely to the Begums and their ministers, and what related to them; and there is not a single syllable of it that, by any possible stretch of construction, can in the least apply to any knowledge, or to any ratification, of those distresses. It is in the instructions to Mr. Bristow of the 3d of October, 1782:—

He approves of the severities towards the Begums.

"The severities which have been exercised towards the Begums were most justly merited, by the advantage which they took of the troubles in which I was personally involved the last year, to excite a rebellion in the Nabob's government, and to complete the ruin which they thought was impending upon ours. If it is the Nabob's desire to forget and forgive their past offences [I have no objection to his allowing them in pensions the nominal amount of their jagheers. But, if he shall ever offer to restore their jagheers to them, or to give them any property in land, after the warning which they have given him by the dangerous abuse which they formerly made of his indulgence, you must remonstrate in the strongest terms. You must not permit such an act to take place, until this Government shall have received intimation of it, and shall have had time to interpose its influence for the] prevention of it."

Not of the distresses suffered in the Khourd Mahal.

My Lords, can that possibly be misunderstood as having any, the smallest, application to the distresses suffered by the Khourd Mahal? I cite it from the Appendix, page 254; but I believe we have given it in evidence in some of our latter days of the evidence. It is dated the 23d of October, 1782. Now, by what possible ingenuity can this passage that I have read be perverted into a ratification or an approval of the distresses that I have stated to your Lordships? But it is more extraordinary still, because the greatest part of this paragraph of the Article contains extracts from an anonymous paper of intelligence, without date, transmitted from Fyzabad in the year 1784; and Mr. Hastings is supposed, in the year 1782, they being made known to him, to have declared them justly merited. They did not happen till the year 1784! The paper of intelligence upon which they rely, which has been given in evidence by the honourable Managers themselves—your Lordships will find in page 899.

Paper of intelligence from Fyzabad.

In page 899 it is stated:—

"The Managers for the Commons acquainted the House they would next read a paper of intelligence, which had been authenticated by Mr. Holt in his evidence at the bar, relative to the miserable situation of those women, which they meant to bring home to Mr. Hastings."

It is a translation of a paper of intelligence from Fyzabad, transmitted by Mr. Bristow, in a letter dated 29th January, 1784. There is a distinct date—1784; and, if your Lord-

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ships will have the goodness to look at and compare it with the Article--pages 899 and 900—your Lordships will find that there are a few interpolations, with the addition of the words—" after fruitless supplications and shrieks of famine, to endeavour to break the enclosure of the palace, and force their way to the market place in order to beg for bread, and, finally, to submit to the extremity of disgrace and degradation by exposing themselves to public view, with the starving children ;" and a few other strong expressions are put into it which are not in the original, but which are taken out of other documents, in 1782, and are spliced and mixed, in order to make out altogether this lamentable tale of distress, happening at both periods, the communication of which being made to Mr. Hastings, he is supposed to declare them then justly merited, and to direct the continuance of them ! The evidence of Mr. Holt is in pages 397 and 399. The authentication of this paper of intelligence by Mr. Holt, who was at Lucknow when it was sent, is--that it was received there and sent by a news writer from Fyzabad to Lucknow, and from thence transmitted to Calcutta, in January 1784 ; that is the authentication of it.

Interpolations.

Now, I would just make one observation upon this piece of evidence. Here, a paper of intelligence, without date, transmitted from a news writer at Fyzabad, is perfectly good evidence to substantiate facts stated in a charge of high crimes and misdemeanors ; but intelligence sent from all the officers, in all their different stations—accounts from all quarters of a concurrence in rebellion—that is no evidence upon which a man ought to act ! An anonymous paper of intelligence is sufficient to ground all the facts that are stated here in a charge of high crimes and misdemeanors, on the part of the Commons of Great Britain in Parliament assembled. That is the only evidence that they have of that part of the case ; and that is very good evidence to support the very Charge in which they would deprive Mr. Hastings of his justification as a public man for acting upon that which was matter of notoriety in the whole country, confirmed by all the evidence, written and parol, which was the general belief at the time and is the belief at this day ! There is the consistence, my Lords, of the accusers of Mr. Hastings !

Inconsistency of the Managers in producing it as evidence.

But when was it that this was communicated to Mr. Hastings ? In January, 1784. Why then, it could not have been alluded to in October 1782. In the next place, is it true, or have they shown, that Mr. Hastings acted in any

Not communicated to Mr. Hastings till Jan. 1784.

6 May 1793. respect to direct the continuance or revival of these [severities] that are stated in the year 1784? There is not a tittle of evidence to prove it; but it is perfectly without foundation. It is asserted in the Article; but there is not a syllable of evidence, written or parol, to bring it home to Mr. Hastings, or to prove that he did what it is stated he did.

The severities not directed by Mr. Hastings.

My Lords, having now gone through this subject, which seemed, for the honour and character of Mr. Hastings, necessary to be examined correctly, and that your Lordships might be put in possession of all the materials, for the purpose of examining whether a British subject has been guilty of what is here stated against him—having done that, I shall only now refer your Lordships back again to what was said would be the inference, if these were not brought home to Mr. Hastings. I will not repeat the expressions now. The honourable Manager, when he used them, had all that evidence that I have stated before him to prove the reverse of the whole Charge, at the time when he stated that it would be a "mean and pitiful mode of endeavouring to steal an interest in this cause, by introducing into it a narrative of distresses which he could not bring home to the person he accused." My Lords, I forbear to make any comment upon this: it is the management of an impeachment in the House of Commons!

Self-condemnation of the Manager.

The stifling an inquiry imputed to Mr. Hastings.

My Lords, there remains only one subject of this Article which I have not examined. I shall detain your Lordships but a short time upon it. It relates to a transaction perfectly distinct in the consideration of it: it relates to a transaction that happened in the latter end of the year 1783—the audaciously stifling an inquiry. My Lords, it is the subject of the last paragraph but one of the Article, paragraph 29—as an aggravation of his crimes—

"That he audaciously stifled an inquiry into the crimes charged by him, the said Warren Hastings, upon the said princesses."

And here, your Lordships will find, these princesses are taken up entirely as the private subjects of the British Government, and charged with crimes committed against it:—

Letter of the court of Directors.

"Which inquiry he was bound to make, because the court of Directors did declare themselves dissatisfied with the scandalous evidence transmitted by him in his justification of the wicked acts aforesaid, and did in effect and substance"—

Your Lordships will attend to these words—

"in effect and substance, direct him to make a fuller inquiry, and to procure, if he could procure, evidence fitter for his justification, and to

give the oppressed women of rank aforesaid the means of objecting to the said evidence, and of producing evidence on their part. And the said inquiry, in consideration of the true intent and meaning of the letter from the court of Directors, was proposed by his colleague, Mr. Stables, and resisted by the said Warren Hastings, who did thereby presumptuously endeavour to pass an act of indemnity for his own crimes; did wantonly insult the sufferings of the allies of the Company, and show an indecent contempt of the authority and opinions of the Directors, his lawful masters." 6 May 1793.

The Begums represented as persons on their trial.

Now, my Lords, here we have these ladies represented as persons who ought to have had some opportunity given them of objecting to the evidence against them, and of offering evidence on their parts, and [it is stated] that they were to be brought to a trial upon this subject, in consequence of the orders of the court of Directors. The letter of the court of Directors is that one which I have referred your Lordships to before, which contains that admirable policy respecting the jagirdars—the extreme mischief there was in destroying the jagirdars, because it would unite, consolidate and improve, the Nawab's dominion. That letter is in the printed Evidence, page 920. Now, I beg leave to say that the first question is a question of construction—whether this letter of the court of Directors is what it is stated to be. I observe the Article is cautiously worded. It does not state that it was, in the letter of it, so, but that, in effect and substance, they directed it; [it was] the true intent and meaning of the letter.

Intent and meaning of the letter.

I beg leave to say that, according to my construction both of the true intent and meaning of the letter and of the spirit of it, it does not direct any inquiry at all; neither in the terms of it, in the substance of it, nor in the fair sense of it. In the next place, I beg leave to say that, if that had been a fair implication from it, the substance of it was so, and not the letter. Yet, if I show your Lordships that Mr. Hastings' not complying with it was from a misconstruction of it, declaring that he did not understand that to be the sense, intent and meaning, of that letter, it never can be said that it was a direct contempt of the authority of the court of Directors. You may impute to him that he made a wrong construction of the letter; but, supposing him really to believe that the letter did not import their intent that any such inquiry should take place, it could not be a direct contempt of the authority of the court of Directors.

Dissection of the letter.

In the first place, I beg to state that the court of Directors, in this letter, certainly do express their opinion, upon this subject, that there ought to be stronger proofs:—

"We do not see how the Governor General could consent to the re-

6 MAY 1793. sumption of such lands as the Company had engaged should remain in the hands of those who possessed them previous to the execution of the late treaty, without stronger proof of the Begums' defection than have been laid before us."

My Lords, I am now stating the strongest passages of the letter against me. They go on to state :—

"If, therefore, the disaffection of the Begums was not a matter of public notoriety, we cannot but be alarmed for the effects which these subsequent transactions must have had on the minds of the natives of India."

And then it states :—

"If it should hereafter be found that the Begums did not take that hostile part against the Company which has been represented, as well in the Governor General's Narrative as in several documents therein referred to,"—

I beg your Lordships' attention again to their reasoning upon the subject :—

"and as it no where appears, from the paper at present in our possession, that they excited any commotion previous to the imprisonment of the Rajah Cheit Sing, but only armed themselves in consequence of that transaction, and as it is probable that such a conduct proceeded entirely from motives of self defence, under an apprehension that they themselves might likewise be laid under unwarrantable contributions, we direct that you use your influence with the Vizier that their jaghires may be restored to them. But, if they should be under apprehensions respecting the future conduct of the Vizier, and with our further protection, it is our pleasure that you afford those ladies an asylum within the Company's territories, and these be paid the amount of the net collection of their jaghires. Signed, HENRY FLETCHER"—

And so forth. This was in the year 1783—a period of time, as your Lordships will all remember, when a good many accusations upon this subject were brought against Mr. Hastings.

In the first place, I shall beg leave to say that the reasoning here of the court of Directors upon the subject—they will pardon me if I take the liberty of saying it—is very extraordinary, when they state that it "no where appears, from the paper at present in our possession, that they excited any commotion previous to the imprisonment of the Raja Cheyt Sing." No? Why then, it is no crime at all to excite commotions afterwards! They never were accused of having excited them before. The only question is whether they excited commotions afterwards. Not that it is quite correct that they did not excite commotions, by an encouragement of Cheyt Sing to become rebellious and resist the orders of Government. It no where appears! But it does some where appear.

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Do the court of Directors mean to say that there is no harm in exciting commotions after one has begun? When a commotion begins, let it run like wildfire all over India; it is all fair if you did not begin first! Next, they state they only armed themselves in consequence of that transaction. Suppose they did! Then you admit that they armed in consequence of that transaction. For what purpose? "And, as it is probable that such a conduct proceeded entirely from motives of self defence, under the apprehension that they themselves might likewise be laid under unwarrantable contributions." Probable? It is highly improbable that any such thing could be.

Opinion of the Managers as to the Begums' supposed trust of the British nation.

And, my Lords, I have the honourable Managers with me here; for they do not at all agree with the Directors upon the subject, but take up directly the opposite proposition. They say,—"It is ridiculous to suppose they had any apprehensions from the British nation or the East India Company. They had the greatest confidence and reliance, to the last, on the British nation; and therefore this is a very foolish idea indeed, to suppose that they could be in danger of any unwarrantable contributions being made upon them" —say the honourable Managers:—"they could never be so foolish as to engage in anything against the Company, because their full reliance was upon the Company."

Fallacy of the reasoning of the Directors.

Here the Directors say—"True it is they armed: true it is they acted against you: but they were justified in doing it." Why? "Because it is a *quia timent* rebellion. They were afraid you were going to make unwarrantable contribution, and therefore they were determined to do an act that should make it warrantable." That is the reasoning here. As to how far it is just, it is quite enough for me to say that this document, which is brought forward as accusatory against him, is directly contrary to the principle and the doctrine upon which Mr. Hastings has been accused in this Court. Here they say the question is—did they direct any inquiry? No. They say, if it was not matter of public notoriety they are alarmed. Then, if it was matter of public notoriety you are not alarmed. Now I have proved it matter of public notoriety, because I have called witnesses who were there at the time, who all say it was notorious, that all persons in the country did believe it. Then, there is an end of the alarm of the court of Directors, for they were alarmed only hypothetically, if it was not so; but, if it was so, there is an end of your alarm.

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In the next place, they say—"they cannot but be alarmed for the effects which these transactions must have had upon the minds of the natives of India." Well, but suppose that it is notorious; suppose that it is the belief of the whole country that they did act hostilely; what then? May there not be some little danger likewise of encouraging similar attempts? Is it advisable—is it prudent—to proclaim publicly in India this doctrine of protection to a rebel in open arms, to those who assisted him in that rebellion, in a country where they are believed to have done so—whether rightly or wrongly, I am not now inquiring? But here your Lordships have the fact proved upon oath by several witnesses, who must know whether it was so or not: they say it was the universal belief of the country then, and it is so now.

Danger of encouraging similar attempts at rebellion.

Is it to be thought an advisable thing to hold up, in India, the flag of encouragement to those persons who acted against the British nation in the hour of their greatest distress. For these are the only persons on behalf of whom a charge of tyranny, cruelty and breach of faith, is made against Mr. Hastings—those persons who, in India, are universally believed to have been—one a rebel in open arms against us, and the other two persons taking an hostile part by encouraging and assisting him. Then, I ask, where is the just cause of alarm; and whether, if that was notorious in the country, it is advisable or prudent that any idea should prevail there that encouragement will be given to acts of that sort?

I hope nothing I have said will be supposed to impute that this charge should have any of that effect. No, I know it was preferred upon a contrary proposition. Your Lordships have been told it was made upon an idea that all this was a plot of Mr. Hastings. The honourable Manager, who speaks the sense of the House of Commons, says it was so. I hope I shall not be weighed down by the authority of the prosecutor, when I have the grounds upon which the prosecution depends. If it was so, undoubtedly it was right that it should be sent to be inquired into—to be thoroughly sifted. But, when I am told what were the grounds, and when I am told that that which was supposed to be the plot and fiction of Mr. Hastings in 1781 was the entire belief of the country in the September preceding, then there is an end of the ground upon which this accusation is made: there is an end of all the good effects which can be produced

by going on with it. It was then the universal belief, and it is so now; and therefore I hope there will be no sort of alarm on the one side. The only just cause of alarm, if there is any, would be on the other. If it could possibly be thought, for a moment, that the British nation should censure these necessary acts, that were done for the purpose of restraining those who, in the hour of our difficulty, wanted to distress and destroy us—if those persons should be the the objects of our favour and attention, after that is proved distinctly to be the belief of the whole country, at the time and since—then there will be just cause of alarm, and not before.

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Dangerous tendency of the accusation.

They state "if it should hereafter be found that the Begums did not take that hostile part"—then what is to be done?—"their jagirs are to be restored to them." Here it is hypothetical. "Upon the present state of the case we do not direct it. If anything should be made known to you to show that the Begums did not take that hostile part, then you are to restore their jagirs." "But what if everything that has happened since has only tended to confirm it; am I to act upon this then?" "No; it is only put hypothetically, that, if their innocence should appear, then you are to restore the jagirs; and that is the only measure you are to take."

Want of precision in the order of the Directors

My Lords, I would only say, on this subject of inquiry, if it had been intended to be directed, why did they not distinctly say so? Why leave it to be collected by dark inferences and innendoes—by ifs? Why not state what the inquiry is to be; by whom to be conducted; by what sort of evidence, and in what place? What witnesses—what is it will satisfy you? Upon a subject of this sort, we have a right to expect that there should be a distinct order given for that purpose. It is said that these ladies ought to have an opportunity of objecting to the evidence. Before whom are they to make the objections? Who is to decide them? Who is to decide whether a leading question is put to a prisoner in the field; whether a question was taken down in writing; and whether on that account or not to be received? By what method and in what mode are we to proceed against these ladies? what would be satisfactory for the purpose? Mr. Hastings distinctly states that to be the ground upon which he acted—that it was not in contempt of the court of Directors, but from a real belief that the court had not intended it.

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Mr. Hastings' interpretation of the letter.

He says, on the 28th of August, 1783;—

"I have attentively read the fourth and subsequent paragraghs of the letter of the 19th of February, but find no order, expressed or implied, which can warrant the inquiry."

Concurrence of Mr. Macpherson.

In answer to Mr. Stables, he desires the paragraphs from the Directors' letter to be entered in this place, because it does not appear to him that the court of Directors had directed any inquiry to be made. Mr. Macpherson, one of the Council, after taking time for consideration, upon the 8th of October, 1783, sends in a minute, which is entered upon the consultation of the 13th of October, wherein he concurs with Mr. Hastings, saying:—

"When it was first read in Council, I understood the paragraph about the Begums as directing an investigation of the grounds on which they were deprived of their jaghires, but, upon a close attention to the words and spirit of the different paragraphs upon this subject, I do not think that we are directed to commence any new investigation of evidence. Indeed, I do not see how such an investigation could be regularly undertaken, or what salutary purpose it could produce."

General inconsistency of the letter.

And throughout, in every part of it, Mr. Hastings and Mr. Macpherson both proceed upon the idea that the court of Directors had not ordered it—that it was not the intent and meaning of the court of Directors. What was to be the object? Their jagirs were to be restored if, in the event, they were found not to be guilty. But, my Lords, I would ask—what was to be done with the money? What was to be done with their treasures? Upon that subject the letter is silent. Well then, suppose any inquiry was made, and in the result it had turned out—what it never could turn out, because the result of that inquiry would be like the inquiry here—suppose it had turned out in the result that the Begums had not acted hostilely, but otherwise; what then? All that the court of Directors order is, that the jagirs are to be restored. It is said that it was a wanton insult to our allies, not to prosecute an inquiry, the object and the end of which was to be what I have stated. I should be glad to ask—whether it would not have been an insult to our allies, having made the inquiry and found, in the result, that they had acted friendly and not hostilely, to restore them their jagirs merely, when they had a commutation in lieu of them, and not to have restored their money? But was it the intent of the court of Directors to pursue this inquiry? If it was, have they done anything since? Has any one person ever thought of doing that which, in the result, must be done, namely, restoring all the money that was taken from them,

The Directors refrain from taking further steps.

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with interest down to the present time? Surely it will hardly be said to be done for the purpose of showing that country the disinterestedness of the British nation, that, for a period of twelve years, the whole British nation have remained in possession of all that was the produce of Mr. Hastings' acts, and that its honour and its justice will be satisfied to the world, if at length you punish the individual and keep the produce?

The honour of the nation involved in the alleged guilt of Mr. Hastings.

My Lords, is the British nation affected by the act of an individual, in the midst of war, in the midst of difficulties, acting upon what he believed at the time; and is the British nation not in the least affected by having, ever since, to this hour, detained the produce in its possession, without an idea of ever restoring a single rupee of the money or any part of the land that was taken from Cheyt Sing? Is this the mode in which we are to satisfy the people of India of British wisdom, or of British justice and British disinterestedness? No, my Lords: I am happy to find that the honour of Mr. Hastings and the honour of the nation must stand or fall together; for it is impossible to convict Mr. Hastings—to declare that he was not justified in doing what he did—and to justify what has been done ever since, grounded upon the idea that all that was done is to remain settled and unmoved—that all the persons who were dispossessed by these acts are to remain so. Can it possibly be the idea of anybody that this is the conduct of a disinterested nation? The people of India are mercenary people. They are hunting after money: money is their God. Here is a model of the disinterestedness of the British nation! Look at us! See how many years of impeachment we have given for lacs of rupees! See what a virtuous, generous and disinterested, people we are: we pay with impeachment: we punish the individual and—keep the money! My Lords, upon any idea that the acts were wrong, this is a conduct that surely will not contribute much to the character or to the fame of the British nation.

Effect of his conviction upon the people of India.

But I am happy to find that the honour and character of the British nation is in no danger at all; because the acts were right—the conduct of Mr. Hastings was just. I have proved it to be just, to be reconcilable to all the principles of honour, of integrity, and good faith between state and state. I have shown the conduct of those on behalf of whom the charge was made to have been the reverse — to have commenced in violence, to have been propagated by outrage,

6 May 1793. by perfidy towards the British nation. Therefore the British nation has done well in considering Cheyt Sing as justly removed from his country, and the arrangements made in consequence of it as just;—in considering the Begums to be justly made to restore to the right owner the treasure that belonged to him. Upon the whole, I trust there can be no doubt, in viewing that part of the subject, but that all the conduct of the British nation and Mr. Hastings is perfectly right, from the beginning to the end.

Mr. Hastings' motive for avoiding the inquiry.

But, my Lords, we are told that Mr. Hastings acted in this way for the purpose of stifling an inquiry; that he audaciously stifled an inquiry to pass an act of indemnity for his own crimes. Now give me leave to ask, and I put it to your Lordships—do you believe that was the motive? Can any man read it and believe it? In the first place, is there not an obvious motive for his conduct? Can any man read his reasons and be ignorant of the plain, obvious, wise and prudent, policy of avoiding at that period the inquiry? The reasons are stated distinctly; and I request it of your Lordships to turn it in your minds, and see whether they are not perfectly sound and well founded. The Nawab had acted upon a belief that the engagement was broken, and he had got back a part of his rights. From that period the subject was dropped, and they were reconciled. The inquiry would have again exasperated, again renewed animosities between, those parties who are stated to stand in that relation to each other; and it was an inquiry that was not to be directed to any valid or substantial end. Mr. Hastings states that to have been his reason: he thought it imprudent and impolitic to revive animosities between the Begum and her son. He thought it also highly impolitic to induce a belief, on the part of the Begums, that their real conduct was not fully known; or that, on the part of the English Company, they were ready to give any sort of countenance to their conduct. He said—"I know what will be the consequence if you offer them an asylum — these ladies who have before threatened to go to Corbullah, when the Nawab was averse to it—these ladies who, in 1776, and at different periods, have constantly been engaged in producing commotions and disturbances in the country, by means of their jagirs." He thought, to offer them an asylum was to prevent that union which it was the wish and object at that time to promote. These were the reasons he stated; and I request your Lordships to consider well whether they were not obviously the motives upon which he acted.

Mischievous consequences likely to follow from it.

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What was to be done? To notify to the Begums this boon that had been sent out for them? What was it? To intimate to them that they were to undergo an inquiry. Well! what is to be the result of it? "Why, if you are proved innocent, you are to have your jagirs back; if proved guilty, you deserve to lose your lives. Well, do you wish to have the inquiry? O! but you will have the benefit of objecting to evidence." But what is the result? "I do not like a trial here:—an evidence tells me that even the trial itself is an inexpiable pollution, without considering its consequences." "Then here is a fine boon sent you out from England. You have a right to be tried, and the result one way is that you are to get back your jagirs—but not your money, remember! And the result the other way is, to expose you to all the consequences *e contra*." I ask—*cui bono?*—And are not these fair, solid and substantial, reasons why he did not do it?

Little advantage to be derived from it by the Begums.

I would now ask your Lordships whether a contrary motive could have operated upon the mind of Mr. Hastings to stifle an inquiry, if we consider him to have his own interest or safety in view? Good God! was not it the very way to provoke it? When he is told his employers are not satisfied with the evidence they have, could it stifle an inquiry to give them no other? Would that not rather exasperate them? But can it possibly be believed that Mr. Hastings could stifle an inquiry from any anxiety for himself? Has he ever shrunk from inquiry? Has he, throughout all this long inquiry, in any part of it, ever expressed any anxiety but for the accelerated prosecution of it? Could he dread an inquiry there which he has met without fear here? Could he believe that an inquiry, conducted by himself, in the zenith of power, would be productive of his ruin, when an inquiry, conducted for six years by all the power of the country against him, has ended as this has done?

Absence of personal motive in Mr. Hastings in avoiding the inquiry.

My Lords, what has been the result of all this tedious inquiry—of all these six years of prosecution under which he has laboured? My Lords, I have examined every proposition contained in this Article. I have shown you, by comparing it with the evidence written and parol on both sides, that every part of it is founded in a totally mistaken view of the subject—of the character of the parties, of the conduct, of the object, of the motive—of all the circumstances belonging to them and the state of affairs at the time.

Could Mr. Hastings apprehend anything from an inquiry

6 May 1793. in that country? Your Lordships have it in evidence by a great number of gentlemen, as a fact, that in that country their disaffection is universally believed. Then could an inquiry, prosecuted by all those persons which this is supposed to be prosecuted by—by the Resident and commanding officer upon the spot—could that produce anything which this inquiry, prosecuted here so long, has not produced; that is to say, produced every day, from every witness, from every document, fresh evidence to prove that the Begums did act this hostile part, and that every idea respecting their innocence is ill founded? Surely, it will not be said that the witnesses upon the spot there would have been induced to accuse Mr. Hastings, in that situation, who will not come forward to accuse him here?

My Lords, I appeal only to what was stated by the right honourable Manager, the last day of the evidence, upon this subject; and I will then ask your Lordships now, at the close of this subject of a charge of tyranny, cruelty and breach of faith, against Mr. Hastings, whether any more honourable testimony can be given in his behalf, when, after all this length of trial, the right honourable gentleman finds himself under the necessity of coming forward and telling your Lordships—after all the witnesses that have been examined for the prosecution and for the Defendant—that he finds all the witnesses are in the enemy's camp? Then the enemies of Mr. Hastings, after having beat up for volunteers in every quarter, have not yet got one solitary recruit: and this is the monster of tyranny, oppression and cruelty, who has ravaged the province of Oude! This is that person whose character "exceeds in depravity all the history of human wickedness from the time of original sin!" Yet, in the country where all that wickedness, where all that tyranny and cruelty, took place, after the House of Commons have been engaged in a prosecution against him for so many years —after all, we are told that there is not one man who has been upon the spot—that is, anybody who knows anything upon the subject—who is not hostile to the Charge and friendly to the accused!

Uniform testimony to the character of Mr. Hastings.

My Lords, I do not appeal to character and to estimation to answer distinct positive facts. I have given them their answer by a direct examination of the evidence. But when we are told, as we have been, that Mr. Hastings is this monster of cruelty, tyranny and oppression—when these hard epithets are rung in the public ear, from day to day

and from year to year—then are we are not called upon, on the part of Mr. Hastings, to ask this—if his public conduct be what it is represented, must it not be notorious in the country? It is not like the case of private character, which may be unknown to private individuals; but, in the case of public character and public conduct, it must be notorious in the country where he has acted in a government for thirteen years? 6 MAY 1793.

Will your Lordships believe this strange paradox—this wonder of impeachments—that it could possibly be, not only that the plot of Mr. Hastings is the subject of universal belief, but that this monster of tyranny, cruelty and oppression, is the object of universal respect and love? My Lords, the fact is proved by eighteen witnesses to whom we have put the question: and am I to be told, to add to the paradox of absurdities throughout this cause, that, truly, all this goes for nothing; that Mr. Hastings must still be believed to be, what he is asserted to be by those who do not know him—this monster of tyranny, cruelty and oppression, without any evidence; when no less than eighteen witnesses, one after another, come forward to give a testimony to what they must know—whether it be the truth or not; that is to say, not their own opinion, but what is the sense, estimation and opinion, of the country where that government existed? That [they did so] is a fact, my Lords. Then, I ask, whether it is possible that the sense and belief of the country where he lives can be otherwise than it is here stated to be? and, if it is so, whether, upon this instance as well as the other—although those who prosecute Mr. Hastings have done it, I am perfectly persuaded, with the most honourable and virtuous intentions, but have taken it up upon a belief that it is all a plot in Mr. Hastings—that Mr. Hastings was that monster of cruelty—I ask, when the contrary is proved now by all the evidence, whether there can be a doubt left upon that subject?

My Lords, I am convinced that, upon this subject of cruelty and tyranny, which stops here, there cannot possibly be a doubt but that Mr. Hastings is not the character he has been believed and described to be. Let them ask and inquire of all that know him, of all that ever heard of his conduct—from all persons—not his confidential friends only, but those who know his public character—those who know him merely from his life and conduct in the country, the opinion entertained of him at the time—the opinion entertained of him

6 MAY 1793. since—how dear his memory is held in the country from which he came to this hour, and, to the latest moment, how they look up with reverence and respect to the name of Mr. Hastings! Then, am I not intitled to say that he has been prosecuted upon a mistaken belief? Can it possibly operate in any respect to the good government of India—can it produce any good effects upon the natives of India, to prosecute a man whom they all respect, whom they all love?

Injustice of the prosecution.

O! we are told that there is a long arrear of justice; that you have for a long time omitted to punish those that oppressed them. This would be a singular way to settle the account. Because we omitted to punish those who oppressed them, therefore punish one who they say never did oppress them, whom they all hold in the highest veneration and respect! If they believe Mr. Hastings to be that person whom all the witnesses have sworn they believe him to be, can it possibly produce any good effect upon the minds of the people of India to go on, from day to day, from year to year, punishing this gentleman, upon an idea of cruelty which is not believed by any one man in that country?

Conclusion.

I will not detain your Lordships further upon this subject. I am persuaded there can be no danger here in the inquiry that has been prosecuted. Mr. Hastings met the inquiry without fear. He looks forward to the event of it now without any apprehension; because, whatever other absurdities there may be, he is perfectly convinced that this paradox never can happen — that, in a country famed throughout the world—that the highest British tribunal, distinguished not more by its superiority in rank than by its probity and justice, its wisdom and its honour, after years of investigation, after possessing all the evidence by which the Charge is refuted in every part of it—that this great tribunal should pledge its honour to the truth of it. My Lords, Mr. Hastings has no apprehensions for the event.

SPEECH OF ROBERT DALLAS, ESQ., COUNSEL FOR MR. HASTINGS, IN OPENING THE DEFENCE UPON THE SIXTH, SEVENTH AND FOURTEENTH, ARTICLES OF THE CHARGE, RELATING TO PRESENTS; 9 MAY, 1793.

9 MAY 1793.

MY LORDS, it is now my duty to open to your Lordships the Defence to the sixth, the seventh and the fourteenth, Articles of this Impeachment, which, though distinct and separate in the original construction of the Charge, the honourable Managers, for purposes which have no doubt appeared wise to them, have thought fit to consolidate into one. And, my Lords, I cannot enter upon the attempt to perform the task allotted to me without feeling, in a very considerable degree, the disadvantages under which I must necessarily labour, when I consider the variety, the extent and the complication, of the matter which it will be my duty to discuss.

Consolidation of the 6th, 7th and 14th Articles of the Impeachment.

My Lords, on the part of the prosecution, two sessions of Parliament were employed in the inquiry into these Charges. The evidence given fills the volumes that now lie open before me. Three honourable Managers successively put forth their powers upon the occasion; and seven days, sometimes employed in splendid eloquence, sometimes in argumentative discussion, were found to be necessary on the part of the prosecution to explain to the Court the various parts of those different Charges.

My Lords, let not the honourable Managers suppose that I mention these circumstances by way of complaint; still less do I mean to lament the difficulties which in this respect the subject imposes upon me. Various and extensive and complicated as it is, it has been my duty to give it a full and thorough examination, and the course of your Lordships' proceeding has allowed me time sufficient for the purpose. I come, therefore, at last, fully prepared to the utmost of my poor abilities to examine every material allegation of each different Charge; to weigh the evidence; to meet every

9 MAY 1793. essential observation; and to give those Charges, in every part of them, that full and thorough examination, as far as I am able to do it, which the nature of these Charges, considered in reference to the honour of Mr. Hastings, peculiarly and imperiously demands of me.

But, my Lords, it is not necessary to have lived very long in the world, or to have been a very acute observer of human nature, to have discovered that to the mind, as to the body, all efforts are painful beyond a certain degree; and, consequently, that attention, no doubt a powerful effort in many cases, even when originally excited, must relax after a certain continuance, and perhaps be the sooner exhausted in proportion as it is the more intensely bestowed.

My Lords, so sensible was the right honourable Manager, who summed up the evidence on this part of the Charge, of what I am now stating to your Lordships, that he began with soliciting that which his talents gave him a right undoubtedly to command—that which, without flattery to him, I may say they would have extorted even from the most unwilling—he began with soliciting attention. My Lords, if such a request were necessary on the part of the right honourable gentleman, what prospect have I before me—destitute of all those brilliant advantages which so peculiarly distinguish him, and labouring besides under many additional difficulties—if it were only that of being obliged to give an answer to the many powerful observations made by the honourable person to whom I allude?

My Lords, in this situation, one hope alone emboldens me, and that is, the consciousness that, in every part of what I mean to submit to your Lordships, it shall be my unremitting endeavour to comprise within as little space as I possibly can the observations that I have to make, and the conviction that I feel that your Lordships will, on this, as you have done on former occasions, give every attention to this case which the nature of it, and which justice, may require.

Description of the Charges.

I have already had occasion to state that the honourable Managers, in the course which they have thought fit to pursue, have incorporated three Charges into one. And, before I enter upon the separate investigation of each, it may be necessary to state to your Lordships what is the general nature and subject of them.

The receiving of presents.

The sixth Article, commonly known by the name of the Charge of Presents, is that which imputes to Mr. Hastings bribery and corruption, committed in a great number of

instances, and for a great length of time, in the execution of that great public trust committed to his charge. 9 May 1793.

Those parts of the seventh Article on which the honourable Managers have proceeded relate to certain establishments with respect to the revenue, which Mr. Hastings is charged with having overturned, for his own wicked and corrupt purposes, to the vexation, oppression and destruction, of the inhabitants of Bengal. Corrupt dealing with the revenue.

My Lords, the fourteenth Article relates to what is stated to be a bribe offered by the Nawab to Mr. Hastings, through the means of Mr. Middleton; and though it does not allege, or even insinuate, that such bribe was accepted by Mr. Hastings, yet his conduct is stated to be criminal with respect to that transaction in other points, which I hereafter shall have an opportunity to explain. Bribe offered by the Nawab.

My Lords, these are the general nature of the three several Articles; and, in giving an answer to them, I shall endeavour to follow precisely that course which the honourable Managers have pursued, taking each in the turn in which they have brought it forward, and consequently beginning with the sixth Article of this impeachment. The sixth Article.

The sixth Article rests upon two distinct and different grounds. In the first place, it states that Mr. Hastings did, on divers occasions, take different sums of money, as gifts or presents, which it states to be illegal in this respect—that it was contrary to the sense and meaning of an act of Parliament, which act prohibits, under all circumstances whatever, the receipt of gifts or presents by any of the Company's servants, from any native prince or power of India. But, my Lords, this part of the Charge does not stand upon the mere illegality; for your Lordships will find, when I come more particularly to unfold it, that, in every instance, each of these presents is specifically stated to have been taken by Mr. Hastings for his own use and benefit. That Mr. Hastings received presents contrary to act of Parliament.

The second ground on which this Article depends is a charge which pervades the whole of it, that is, a charge of corruption; for the Article distinctly states, that, "not contented with the great emoluments of his station, Mr. Hastings did, at divers days and times, illegally and extorsively and in breach of the duty of his office," take those several sums which are specified in the Charge. Your Lordships, therefore, perceive that this Article is not grounded on the idea of Mr. Hastings having received gifts That he converted them to his own use.

9 MAY 1793. or presents, and applied them, in times of great public difficulty and danger, to the use of the Company; but, rejecting and excluding altogether every belief of the sort, it pointedly and specifically imputes to Mr. Hastings that, in every instance, he took these sums corruptly—in this sense and meaning of the word, corrupt—that he took them for his own use and benefit; explained by the words—"not contented with the emoluments of his station."

Definition of the Charge.

The general question, therefore, with respect to the whole of this Article, for your Lordships to consider will be, whether that be true which the honourable Managers have taken upon themselves to state in this Charge—namely, that, in every one of these instances, Mr. Hastings took the gift or present which is the subject of the Charge, in violation of the duties of his office in this respect—namely, that he took them for his own use and benefit; that is, not to apply them to the public service, but purely and distractedly for the purpose of enriching himself.

Corruption.

Corruption, then, broadly stated upon the front of this Charge, broadly avowed by each honourable Manager in the course of their successive speeches, forms the foundation upon which it stands. And, my Lords, each honourable Manager has, in his turn, been peculiarly solicitous to enlarge upon the general nature of this offence, and we have been told that, while every other vice may be connected with goodness or with greatness of mind—while into every other crime at least a proportion of virtue may enter—with respect to corruption, it is pure, unmixed, unadulterated, guilt. Be it so! The advocate for Mr. Hastings need not become the apologist for corruption. Let it be all the honourable Managers have described. Nay, let it be more, if more the imagination can conceive. Take the picture they have held up to you, with all its hateful colours and disgusting features; I on the part of Mr. Hastings have no objection whatever. But, my Lords, on the other hand, one poor request I humbly presume to make—I make it in the shape of a request, though I am intitled to claim it as a right—and that is, that in a case of this sort, so described by the honourable Managers, in proportion to the enormity of the offence the proof may be clear; and that your Lordships will not, upon loose inferences—upon flimsy suspicions—upon uncertain conjectures—upon light and rash presumptions—fasten an offence of this sort upon the

criminal at your bar;—and more particularly in opposition to strong, weighty and decisive, facts at this moment in the opposite scale. 9 May 1793.

My Lords, having said thus much with respect to the general nature of the subject, I shall now more particularly consider the precise terms in which the Article is framed, in order to collect from those terms the specific guilt which, in each instance, it imputes to Mr. Hastings. And, my Lords, the Charge begins with stating, that great extortion and corruption had been practised by the Company's servants in India, under the pretence of receiving presents from the native powers or princes; that the receipt of such presents is illegal and criminal, injurious to the welfare of the Company and dishonourable to the British name. It next alleges, that the Company had endeavoured to restrain such practice, by obliging their servants to enter into covenants for the purpose; and that, in fact, Mr. Hastings did enter into such covenants.

Terms of the Article.

Corrupt practices imputed to the Company's servants.

Endeavours of the Company to restrain them.

On considering the precise terms of this Charge, I own myself a little at a loss to collect what is the exact meaning of it; for the Charge begins with stating that—

Want of precision in the Charge.

> "Great extortion and corruption had been practised by the Company's servants under a pretence of receiving presents from the Indian princes or powers, their ministers and agents, or others. That the receiving such presents is illegal and criminal."

That extortion and corruption are illegal and criminal, is an inference that we need not have been beholden to this Charge for; therefore, this is a proposition I by no means mean to dispute with them. On the contrary, I freely admit that, in every instance where they can show a present being merely a pretence for extortion and corruption, that must be, as they state, illegal and criminal, no doubt. But, on the other hand, if the Charge means to allege that all presents, even though freely and voluntarily given and in other respects honourably accepted, were illegal and criminal before the act, when taken by a party for his own use and benefit, or, since the act, when taken for the use and benefit of the Company—that is a proposition which I utterly deny, and, I trust, I shall hereafter be able completely to disprove.

My Lords, in support of this proposition—that is, that a practice of this sort had prevailed—the case opens, in point of evidence on the part of the honourable Managers, with producing a letter, which was written on the 19th of Sep-

9 MAY 1793. tember, 1766, from Lord Clive and the members of the Select Committee to the court of Directors, upon their arrival at Calcutta, which letter you will find in page 956 of the printed Minutes. This letter describes, for the information of the court of Directors, the state in which that noble Lord found the settlement on his arrival there; and he distinctly says, after giving an account of the death of Mir Jaffier, that Miran's son was a minor; which circumstance alone would have naturally brought the whole administration into our hands, at a juncture when it became indispensably necessary we should realise that shadow of power and influence which, having no solid foundation, was exposed to the danger of being annihilated by the first stroke of adverse fortune. He then states, that, instead of this being done, a contrary course of conduct was pursued corruptly by the Company's servants, at that time, in this way—that not a single rupee was stipulated for the Company, whose interests were sacrificed, that their servants might revel in the spoils of a treasury before impoverished, but now totally exhausted. The practice, then, of which Lord Clive distinctly complained to the court of Directors in the year 1767 was, that the Company's servants had taken bribes for themselves, to the impoverishment of the treasury of the Company, and, as he states it, nearly to the ruin of their affairs.

Letter of Lord Clive in evidence of the corrupt practices of the Company's servants.

The honourable Managers have next stated that means were taken to prevent the abuses complained of; the abuses complained of being, therefore, those which I have just now had the honour to state; and the means in question consisted, in the first place, in a penalty bond proposed by Lord Clive, by which every future Governor was to bind himself in the penalty of 150,000*l.* that he would not receive "any gift or present whatever, to his own interest or to his own use and benefit,"—so expressly explained upon the face of that deed. And these words I will beg your Lordships particularly to bear in mind, during the whole course of the argument—that the penalty bond, which was proposed by Lord Clive to be executed by all future Governors, professed to be merely for the purpose of preventing their receiving presents for their own interest. It, therefore, will not be said that a covenant of that sort, either from the words in which it is framed or from the sense and meaning of it, extended to a case of a different and contrary sort, that is, the receipt of presents not for their own use and benefit, but for the use and benefit of the Company.

Penalty bond, restraining the Governor from taking presents.

Act extending to presents received for the use of the Company.

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At the same time, Lord Clive also proposed that he should himself, in the first instance, and that every future Governor should take an oath, pledging himself generally not to receive any such presents or allowances. And it will be necessary for your Lordships, for a purpose which in a few minutes I shall explain, to attend to the precise nature of that oath. There are two things which will require your Lordships' consideration;—the one is, the terms in which the oath is framed; the other, the manner in which it was to be taken. With respect to the former, I have already stated what the terms were. With respect to the latter, I beg your attention to what you will find in page 956 of the printed Minutes, in which Lord Clive states:—

Restrictive oath proposed by Lord Clive.

> "I therefore propose that the Governor General shall, in the most public manner, in the presence of all the Company's servants, the mayor and aldermen and free merchants assembled at the Mayor's Court, take the oath and execute the penalty bond hereunto annexed."

I would beg your Lordships to bear in your memory that, as a necessary formality attending the taking of the restrictive oath proposed by Lord Clive, it appears, even upon the face of the evidence produced by the honourable Managers themselves, that it was an oath to be taken at the Town Hall, in the presence of the mayor and aldermen and inhabitants assembled. This oath was proposed by Lord Clive within a very short time before he himself quitted the Government, and that noble Lord bequeathed it as a legacy to his successors. The proposal of his Lordship met with the unanimous approbation of the Council, as then composed. Lord Clive shortly after left the Government. To Lord Clive Mr. Verelst succeeded, in the year 1767. He continued to exercise the power of Government till the 26th of December, 1769, when Mr. Cartier succeeded him; and upon the 20th of February, 1772, Mr. Cartier was succeeded by Mr. Hastings.

Lord Clive's measures adopted by the Council.

And now, my Lords, before I enter upon the consideration of that long and eventful period which furnishes the transactions which are the subjects of the present Charge, your Lordships will give me leave to pause for a moment, on the entrance of that extensive field which now opens and spreads wide before me, and to draw your attention, for a few minutes only, to some facts which had preceded the period in question, and which I conceive to be very material to be considered, for the purpose of throwing a light upon it.

It was in the year 1749 that Mr. Hastings first went out to

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Period of Mr. Hastings' first service in India.

India in the Company's service, where he continued till the year 1765, when he returned to Europe; having passed, in the intermediate time, through all the different gradations of the service, rising to the rank and station of fourth in Council, and having filled the important situation of Resident at the court of Mir Jaffier. Acquainted, as your Lordships are, with the history of India in general, and particularly conversant with the transactions of this period, it is unnecessary for me to inform you that, in effect, they comprise all those great public revolutions in the course of which this practice, complained of by Lord Clive, had so peculiarly prevailed, in the instance of several, if not most, of the Company's servants. The defeat and death of Suja-ud-Dowla; the deposition of Mir Jaffier; the appointment of Cossim Ali; his war; his flight; the restoration of Mir Jaffier;—all these happened within that period of time when Mr. Hastings was first in India and before his return to Europe. Thus, then, having all the great means of temptation within his reach, what was the conduct of Mr. Hastings? He returned to Europe without the slightest imputation upon his fame!

Important events comprised within it.

He returns in 1769, as second in Council at Madras.

My Lords, circumstances, which it is not now necessary to enumerate, determined him to return again; and, in the year 1769, he went out to Madras with the appointment of second in Council, and to succeed to the Government. In what manner Mr. Hastings conducted himself when there your Lordships are able to collect from the evidence given by the honourable Managers, which consists in the thanks of the court of Directors conveyed to Mr. Hastings for his conduct while upon the coast, in having constructed, as they express it, with equal skill and labour, that plan which had so materially conduced to the benefit of their investment there. While there, he was by the court of Directors appointed to be second in Council at Calcutta, and to succeed to the Government on the resignation of Mr. Cartier. As Mr. Hastings had before left Bengal, so now he quitted Madras, without even a circulating whisper to his disadvantage. And, from that hour down to the moment when I am addressing your Lordships, no man has ventured to impute to Mr. Hastings, in any one public situation, that he found the least degree of corruption or peculation whatever.

Receives the thanks of the court of Directors.

Is appointed second in Council at Calcutta.

Appointment of two committees of the House of

Your Lordships perfectly know, and many of you must very correctly remember, that, about this time, two committees of the House of Commons were appointed, for the pur-

9 MAY 1793. — Commons on Indian affairs.

pose of inquiring into the extraordinary events which had happened in India, and which had led to the acquisition of great territorial possessions with imperial rights annexed to them. Before one of these committees—I mean the Secret Committee—came various plans which Mr. Hastings had constructed, and, in particular, two, involving the most essential objects of Government—the administration of justice, and the collection of the revenues. These plans appeared to the most able members of that committee to be constructed with so much ability, with so much attention to the public service, with so much attention to the rights of individuals, in every instance, that they drew from the most able persons who sat upon that committee the warmest commendations in favour of the author.

Approval of Mr. Hastings' measures by the Secret Committee.

My Lords, the course which the other committee—I mean the Select Committee—pursued was somewhat different; and your Lordships know that, as the result of their labours, they produced a most accurate investigation of all these scenes of peculation which were alleged to have prevailed. The sums taken by a great number of individuals were specified. The names were mentioned which [were discovered], after every inquiry that could take place and the sharpest and keenest investigation. Here again, though Mr. Hastings had been present during all these great operations, his name was not to be found in that list, but he stood universally acquitted of having been concerned in the transactions of that period.

Investigation by the Select Committee.

Acquittal of Mr. Hastings.

Your Lordships know that, grounding himself afterwards upon the solid and useful matter which the reports of these committees produced, the noble Lord then at the head of administration, when the question arose who was the fittest person under the new Act to be made Governor General of Bengal, brought forward the name of Mr. Hastings distinctly and specifically on this ground—that his past conduct was the surest pledge for his future behaviour. Think not, my Lords, that I state these circumstances to conciliate favour or to procure indulgence; still less do I mean to contend that the conduct of Mr. Hastings, if meritorious during one period of time, can be set off against his conduct during another, if proved to be criminal. No; I distinctly disclaim on the behalf of Mr. Hastings all ideas of that sort. Show the conduct of Mr. Hastings to be corrupt in any one instance, in any one hour of his life; prove it; ascertain it; fix it by such evidence as can satisfy honourable minds, justly

Mr. Hastings appointed Governor General under the new act.

9 MAY 1793. solicitous of the fame of others because regardful of their own; and God forbid that I should so tarnish the honour and sully the cause of Mr. Hastings as to desire your Lordships, in such a case, to consider what hath been his conduct at any past period of time whatever!

Importance of character.

But, my Lords, when the inquiry is not about facts but about motives, when your Lordships are desired to look into the heart of Mr. Hastings, when you are to try his conduct in a great number of instances by the test of probability, when you are called upon to decide upon inferences, which must be conclusions drawn from the received and acknowledged principles of human action in such a case, surely the reason and justice of every man will go along with me when I state that the question fairly and naturally arises, when all is to be reduced to the test of probability, how far it is probable that any man who, during a long course of years, exposed to every species of temptation, had uniformly maintained a pure and honourable conduct—that such a man, with less inducement, would at once change every habit, violate every rule, reverse every principle, and become suddenly and in a moment the complete reverse, the direct opposite, of all that he had proved before. I say, suddenly and in a moment; for even to this extent does the attack upon the part of the prosecution proceed. For your Lordships will find that the honourable Managers, in the course of their speeches and in the progress of their evidence, have imputed this to Mr. Hastings—that, being by the duty of his station under the necessity of taking that oath which had been originally proposed by Lord Clive; which oath, they have distinctly stated, and pledged their credit for the assertion—and materially is their credit concerned in the event—they have stated that that oath, which was taken by Lord Clive in the first instance, was afterwards taken by Mr. Verelst, was afterwards taken by Mr. Cartier, but that Mr. Hastings, departing from the practice of his immediate predecessors, omitted to take that oath;—he omitted to take it, merely because, at the very moment when he was receiving the charge of the Government, he was plotting and meditating those scenes of corruption which the honourable Managers have afterwards thought fit to charge him with.

Evasion of the restrictive oath imputed to Mr. Hastings.

Odious nature of the accusation.

My Lords, an accusation of a more odious nature it is impossible for the mind of man to conceive; and thus much, at least, I may venture to state, that it ought not to have been lightly or to have been rashly made. What is it?

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That, in the very moment of receiving the charge of the Government, Mr. Hastings was meditating corruption! My Lords, it requires a very little knowledge of human nature to have discovered that, except where the heart of man is thoroughly depraved, confidence is felt as kindness, and kindness begets gratitude; and, though men of doubtful and weak principles may, in the course of time, give way to temptation often repeated and powerfully urged, yet, for the honour of human nature, it hardly ever happens that, in the very moment of any person receiving the charge of a great public trust, his mind is intently and solely employed how, at some future opportunity, he should be able to betray it: and yet, my Lords, this is the charge the honourable Managers have made against Mr. Hastings! I now proceed to examine upon what grounds. The evidence that relates to this subject your Lordships will find in the printed Minutes, page 958: and the honourable Managers begin with stating that they will prove that Lord Clive took the oath and entered into the covenant before mentioned. And, for this purpose, they read an extract of a letter from the President and Council to the court of Directors, of the 9th of December, 1766, which in substance states that, on the first day of October, Lord Clive had taken the restrictive oath and executed the penalty bond in the manner prescribed. Now, the first thing to be observed is, that, instead of giving in evidence the entry of the oath being taken as it appears from the consultations, the honourable Managers have merely given in evidence a letter which states that fact to the court of Diretcors. The rest of this evidence, important as it is, your Lordships will find to be thrown into the Appendix.

Nature of the evidence of the oath taken by Lord Clive.

On the face of the oath, as taken by Lord Clive, it appears to have been sworn in open Court; and this very letter, specifying that it was taken in the manner prescribed, and that manner being that it should necessarily be taken at the mayor's court, in the presence of the mayor, aldermen and inhabitants assembled, it followed that the oath which Lord Clive took was, in point of fact—we are able to prove it by the evidence in the Appendix—taken in the manner I have stated. The fact, therefore, is quite correct with respect to Lord Clive. But I pledge myself to show that the most common degree of attention which the meanest capacity could have bestowed upon the evidence that follows must have convinced the honourable Managers that the direct reverse of that which they state to be the fact, and as the

Mr. Verelst and Mr. Cartier.

9 May 1793. fact to be proved by their evidence, was necessarily the case.

My Lords, what is it that the honourable Managers have asserted—not loosely, but made it the subject of evidence—not merely made it the subject of evidence, but of acute and powerful observation by the greatest master of all observation, always powerful and acute, the honourable gentleman who summed up this Charge, when he distinctly stated, as in truth he believed—and without reading the evidence he was warranted to believe—that the oath had not merely been taken by Lord Clive, but that it was taken by Mr. Verelst and Mr. Cartier?* The Managers state, in page 958 of the Minutes, that they will prove that Messrs. Verelst and Cartier, when they succeeded to the government of Fort William, respectively took the oath and entered into the covenant before-mentioned. Now to what covenant do the words "before-mentioned" necessarily refer, except to that covenant which they state to have been proposed by Lord Clive, and to that oath which they allege to have been taken by him? Here then the honourable Managers have distinctly stated, as an introductory proposition to their evidence and as that which their proof is to establish—that both Mr. Verelst and Mr. Cartier took that oath which was proposed by Lord Clive, that is, the restrictive oath. Of this the evidence consists of two consultations—the one of the 29th of January 1767; the other the 26th of September, 1769. The first will be found in page 958, the second in page 959. With respect to both these consultations, that which relates to Mr. Verelst states, that he takes his seat as President of the Council, after having the oath of office administered to him. The consultation which relates to Mr. Cartier states, that he takes the chair after the President's oath being administered to him.

Evidence adduced by Managers.

Your Lordships perceive that what is called, in the instance of Mr. Verelst, the oath of office, and in the case of Mr. Cartier, the President's oath, must necessarily have been the same; because the foundation of the argument upon the part of the honourable Managers is, that, in each instance, it was the restrictive oath proposed to be taken by Lord Clive. Now, I desire to ask whether the fair inspection of this evidence does not prove directly the reverse, and that the oath which is alluded to in both these consultations could not, by any possibility whatever, be the restrictive oath

Has no reference to the restrictive oath.

* See the Speech of Mr. Fox; vol. ii. p. 274.

which Lord Clive had proposed; because your Lordships now know that that oath was to be taken at the mayor's court, in the presence of the mayor and aldermen, and inhabitants assembled? Was then this oath, so stated to have been taken by Mr. Verelst and Mr. Cartier, as the oath proposed by Lord Clive, taken at the mayor's court? No; directly the reverse! The consultations in question are the entries of what passed, not at the mayor's court, but at the Council Board; and therefore the very evidence produced by the honourable Managers themselves proves directly the reverse of that fact which they have taken upon them to state. But, my Lords, it does not rest in point of evidence here; for I shall be able to supply one defect at least of the honourable Managers' evidence. For, though they have desired your Lordships to adopt a belief with regard to Mr. Hastings, that the oath which appears upon the face of these consultations was the restrictive oath proposed by Lord Clive, I will prove to your Lordships that, in the case of Mr. Verelst, he did what Lord Clive proposed to be done—he did [it] three weeks after he took this oath at the Council Board. On a motion made at the Council that the inhabitants should be convened in the manner proposed by Lord Clive, they were convened; of which transaction I will for the first time give your Lordships the evidence; and you will find that, three weeks after, he took the restrictive oath; though the honourable Managers have pledged themselves to the truth of this assertion—that the oath he look upon the 9th of January, 1767, at the Board, was that which it now appears not to have been, that is, the oath proposed by Lord Clive. Thus, then, the matter stands with regard to Mr. Verelst.

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The oath taken by Mr. Verelst and Mr. Cartier not the restrictive oath.

It is subsequently taken by Mr. Verelst.

How does it stand with regard to Mr. Cartier? If the honourable Managers had designed to pay that attention to their own evidence in a criminal case which I have done, and which every one of your Lordships will do, they would of course have discovered that—if it could have been unknown to them, with the least degree of attention—which now appears in the case of Mr. Verelst, and which would have led them to inquire whether there is any entry upon the consultations of such an oath being taken by Mr. Cartier. And your Lordships will perceive that this is, of all others, the most important fact with respect to this part of the case, and that in respect of which they seek to fasten the imputation upon Mr. Hastings, that he purposely omitted to

9 MAY 1793. take this oath, for the reasons suggested; because all Mr. Hastings had to do was to take the customary oath which was tendered to him, and that would have been the customary oath which was tendered to his predecessors; and, therefore, I assume that same fact to have existed in both these instances. I will hereafter call the proper officer of the Company, who, notwithstanding the honourable Managers have asserted that Mr. Cartier did, on the 22d of December, 1769, take the restrictive oath proposed by Lord Clive, will prove to your Lordships—as the fact is notorious to every man who was in India—that Mr. Cartier, the immediate predecessor of Mr. Hastings, never did take the oath in question; so that I will establish that, at the moment of Mr. Hastings succeeding to the Government, instead of this fact being true—that Mr. Cartier took that oath and, therefore, that Mr. Hastings was bound to take it—Mr. Cartier did not take the oath, and it was at that time in disuse.

The restrictive oath not taken by Mr. Cartier.

But I will go further yet. It is unimportant to me to inquire on what grounds it could happen that the oath in question was not taken by this gentleman. It is enough for me so far to have disposed of the assertion of the honourable Managers. But I will not content myself with this; for I will prove this important fact—that, from the time of Mr. Verelst's resignation of the Government to Mr. Cartier, the oath in question never has been taken by any one Governor whatever! Now, my Lords, I state it thus, for the consideration of the honourable Managers:—either the oath was in force at the time Mr. Hastings succeeded to the Government, or it was not. If it was in force, it is perfectly immaterial to me whether Mr. Hastings took it or not; because I believe that every one of your Lordships will agree with me, that it certainly was not the duty of Mr. Hastings at that moment to be searching through the consultations to seek for every oath which might have prevailed; but it was the duty of the secretary at the Board to tender that oath to Mr. Hastings which his predecessors had taken. There is upon the face of the consultation no tender of any such oath to Mr. Hastings; the only entry being, that he took his seat at the Board.

Its disuse from the time of Mr. Verelst's resignation.

It is not tendered to Mr. Hastings.

If the case rested here, I ask your Lordships whether there could be any man—explained as the subject is now—so destitute of common candour and common charity as to infer, in respect of a circumstance of this sort, not from the omission of Mr. Hastings, if the oath ought to be taken, but

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from the omission of the officer who did not tender it—that it originated in a premeditated design to violate the duties of that great trust with which he was at that moment invested? Thus the case stands. The honourable Managers have themselves proved these two facts :—In the first place, they have shown that, before Mr. Hastings went out to India to succeed to the Government, he executed a covenant, which was drawn in the precise words of the oath proposed by Lord Clive, binding himself not to receive presents. The second fact which they have proved is this—that, upon the 20th of February, 1772, and which your Lordships will find in the printed Evidence, page 86, Mr. Hastings, being then arrived at Calcutta, took his seat at the Board, after having the customary oath administered. The customary oath was to be true and faithful. The covenant had specified it to be part of that truth and fidelity that he should not receive presents. So that, six weeks only before the very time when they impute this design to Mr. Hastings purposely to omit this oath, he had taken an oath pledging his love of fame and his regard to religion, in the binding sanction of that oath, that he would not do the thing that was expressed!

A covenant entered into by Mr. Hastings, previously to his departure for India.

Ratified by the customary oath.

These are the circumstances from which they infer, that, six weeks after—as if the effect of the oath depended upon its being twice taken and not once—had Mr. Hastings shrunk from repeating it in this instance. But I have said it was the case, not only of Mr. Hastings, but of every succeeding Governor, that this oath was not taken; and I am sure that the right honourable gentleman, when he comes to consider this subject accurately hereafter, must admit this to me, that, if the oath was in force at the time Mr. Cartier resigned the Government, and therefore binding upon Mr. Hastings—if the mere omission on the part of Mr. Cartier to take the oath did not put an end to the obligation—neither did the omission of Mr. Hastings put an end to the same obligation in the instance of those that succeeded him, that is, Sir John Macpherson, Earl Cornwallis and Sir John Shore. What the latter gentleman's conduct will be it is impossible now to show; but I will produce evidence that the oath was not taken by Sir John Macpherson or Earl Cornwallis, any more than by Mr. Hastings himself. And now, having fully explained this circumstance to your Lordships, I leave it to you to judge with what fidelity facts have been stated; with what justice your Lordships are called upon to draw an inference which

The restrictive oath not taken by Sir John Macpherson or Lord Cornwallis.

9 May 1793. is to blast for ever the conduct and character of Mr. Hastings, by tainting it in its very source and origin.

Letters from the Directors, August 28, 1771.

My Lords, a very few days after Mr. Hastings assumed the chair—that was upon the 16th of April, 1772—two letters arrived from the court of Directors; one being a letter addressed to the President and Council, that is, the general letter; the other being a letter addressed separately to Mr. Hastings, and expressly stated to be confidential with respect to him. These two letters led immediately to that transaction which forms the first criminal allegation of this Charge. The letters to which I allude are two letters, both dated the 28th of August, 1771; the one from the court of Directors to Mr. Hastings will be found in page 993 of the printed Evidence. Your Lordships know that, at this time, Mohammed Reza Khan was the naib-subahdar, and the naib-diwan. The latter office he held under the Company; the former under the Nawab of Bengal. In the general letter, addressed by the court of Directors to the President and Council, there is an order for abolishing in future the office of naib-diwan altogether: that is, the collections having being made previous to that time by the means of a native officer, they direct that, in future, the same shall not be done, but that they shall be collected through the intervention of the Company's servants; and, in their letter to the President and Council, they generally order the removal of Mohammed Reza Khan from the office of diwan.

They direct the removal of Mohammed Reza Khan from the office of naib-diwan.

Order his arrest.

In a separate letter to Mr. Hastings, after stating that they had received information which led them to suppose that Mohammed Reza Khan had been concerned in the famine, in the year 1770, by which nearly one half of the inhabitants of Bengal perished, they gave him orders to arrest the person of Mohammed Reza Khan, to bring him down to Calcutta, and to institute an inquiry into his conduct. The precise terms in which these orders are framed I shall hereafter have occasion to mention. Beyond these objects, the court of Directors also commanded that a proper person should be appointed, in the place of Mohammed Reza Khan, to act as guardian of the Nawab during his minority, and as the ostensible minister; and they state that they trusted to the skill and local knowledge of Mr. Hastings and the members of the Council for the appointment of a proper person, upon the removal of Mohammed Reza Khan, to the office.

And the appointment of guardian to the Nawab.

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Mr. Hastings charged with cruelty in executing the order.

With respect to the first Article of this Charge, that is, the removal of Mohammed Reza Khan, though not immediately a fact in charge against Mr. Hastings, the honourable Manager has thought fit to make it stand pre-eminent, in the course of those observations with which he opened this part of the case; and, that I may not misrepresent what was said upon that occasion, I will take the liberty to read the precise words the honourable Manager made use of upon the subject. On recurring to the speech of the honourable Manager, with respect to the removal of Mohammed Reza Khan, I find he expressed himself thus:—

"Mr. Hastings gets a positive order to seize on Mohammed Reza Khan. He executed it. Cruel as it was—unjust as it was—he executed it with a military promptitude of obedience congenial to his own mind—a faithful, active, spirited, instrument in the execution of this order. The very day after he had received it, he sent up privately and without communicating with his Council, and found that great and respectable man and magistrate sitting in his garden, reposing himself, where he was suddenly arrested, and, without giving him a moment's respite, dragged down to Calcutta, and by the orders of Mr. Hastings, exceeding those of the court of Directors, confined for two years without, the greatest part of the time, attempting a trial of him."*

My Lords, such is the representation which the honourable Manager thought fit to make of the conduct of Mr. Hastings, with respect to Mohammed Reza Khan; and I will very shortly leave your Lordships to decide, whether this representation is, in any one particular, in the slightest degree more correct than that which I have already had occasion to observe upon, with regard to the oath proposed to be taken by Lord Clive. From this representation the first fact that we collect, injurious to the character of Mr. Hastings, is—that he executed these orders privately and without communicating with the other members of the Council;—that is, that, of course, the converse of this proposition was his duty. He ought to have executed them publicly; and he ought to have made a communication to the other members of the Council.

Secresy enjoined.

It is unnecessary for me to state in how many instances these Articles of impeachment depend absolutely, and as their sole foundation, upon its being the duty of Mr. Hastings to obey the orders of the court of Directors. I have already referred your Lordships to the order in question, and, upon the face of it, you will find this extraordinary fact—that, though the honourable Managers thought fit to make it a sub-

* See the Speech of Mr. Burke; *supra*, vol. ii., p. 24; where, however, the expressions are differently reported.

9 May 1793. ject of charge against Mr. Hastings, at your Lordships' bar, that he executed these orders privately and without communicating with the members of the Council, the very orders of the court of Directors are, that he should execute them privately, and that he should not communicate them to the rest of the members of the Council. In the close of that letter they say—

"This is a trust which we repose in your integrity. Issue private orders; don't communicate with the other members of the Council."

He does this: and such is the representation the honourable gentleman makes of his conduct!

Importance of obedience in this respect.

My Lords, suffer me to ask what would have been the charge against Mr. Hastings, if, instead of issuing private orders, he had make them public; if, in the course of communicating with the other members of the Council, that had happened which the court of Directors were afraid of—that these orders should transpire; Mohammed Reza Khan should escape; or that this man, possessing all the power of Bengal at that time, had broken into open rebellion? Let me ask, whether you do not think that the disobedience of these orders would have constituted an additional Article to the number of those before you? Then, if Mr. Hastings is bound to obey the orders of the Directors, and yet if he is criminal for his obedience to them, I beg the gentleman, for the sake of common charity, under these circumstances, to inform me what line of conduct is to be pursued with safety.

The charge of cruelty.

I now come to the second Charge:—that is, he executed a cruel order with the military promptitude of obedience congenial to his own mind. My Lords, the only evidence which the honourable Managers have given of this will be found upon your Lordships' Minutes, in which they state the nature of the proceedings of Mr. Hastings, consisting in the instructions to Mr. Middleton. And your Lordships will find that the entry upon the consultation extends merely to orders Mr. Hastings had received from the court of Directors. I will, therefore, state to your Lordships, before I proceed further, what are the precise words of these orders, as they will be found in the Appendix, page 374:—

Extract from the Letter of the Secret Committee.

"Extract of a letter from the Secret Committee to the President. 'In order therefore to make him'—that is Mohammed Reza Khan—'amenable to a due course of justice, and to prevent the ill consequences that might result from the resentment and revenge [which he may conceive on the knowledge of our intentions, we hereby direct and enjoin you,] immediately on the receipt of this letter, to issue your private orders for securing the person of Mahomed Reza Khan.'"

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What says the honourable gentleman? The military promptitude which evinces a cruelty of mind in Mr. Hastings congenial to the spirit of this order was, that he issued them immediately, that is, the day after he received them. But, my Lords, did he execute these orders in a manner congenial to his own mind, in the sense in which the honourable gentleman imputes to him, that is, with any cruelty or barbarity of disposition? Here, again, I will take the liberty to refer your Lordships to the evidence of this transaction, which stands already upon the Minutes, in page 376 of the Appendix, which consists, in the first place, in the letter that was written by Mr. Hastings himself to Mohammed Reza Khan, on the occasion of giving him notice of this order of the court of Directors; an order which, whether just or unjust, cruel or humane, your Lordships know that it was the indispensable duty of Mr. Hastings to obey. All that he could be charged for would be any wanton cruelty in the execution of that order, with which he could not dispense.

Obedience to the order obligatory on Mr. Hastings.

Now, my Lords, let us hear in what manner Mr. Hastings, whose cruel disposition is said to be congenial with this order, conducted himself, with respect to Mohammed Reza Khan, upon the occasion. And, that I may not be supposed to state the sense of the letter stronger than it is, and as it is not very long, I will take the liberty of reading it to you. The letter in question is one which was sent by Mr. Hastings to Mohammed Reza Khan, to communicate to him this order of the court of Directors; and it is in these words:—

His letter communicating the order to Mohammed Reza Khan.

"From the knowledge which I had of your character before my arrival in this country, [and from the friendly intercourse which had commenced between us, it was my very earnest wish to cultivate the same good understanding with you which had subsisted between you and my predecessors in this government. It was, therefore, with exceeding grief and mortification that I found myself disappointed in these hopes by the peremptory commands which I have received within these few days past from the Company, with which you have been since informed by the proceedings of Mr. Middleton, in consequence of the directions which I was under the necessity of giving him. I am a servant of the Company; and whatever they order it is my duty to obey, nor can I deviate one tittle from it. I shall be happy, in my private character, if I can afford you] any testimony of my good will or attachment to you."*

This was a letter written by Mr. Hastings to Mohammed

* Printed in the "Minutes of the Evidence," p. 2123.

9 MAY 1793. Reza Khan, communicating to him the orders of the court of Directors, containing professions of esteem andgood will, lamenting the necessity he was under of carrying into execution an order from which he could not deviate, assuring him of every regard and attachment in his private capacity—in short, a letter breathing in every line the soothing sentiments of kindness and compassion. This did the heart of Mr. Hastings dictate and his willing hand record. These were his cruelties to Mohammed Reza Khan. Oh! that they had been returned to him! But different indeed has been his fate. To him no public prosecutor has attempered the severity of accusing language with professions of private respect, or personal good will. He has heard no soothing sentiment or consoling voice. Mildness of expression—moderation of statement — forbearance—pity—all these have been indeed shaken off like dew drops from the lion's mane; and he has heard but the roar of menance; he has felt but the fury of assault. My Lords, he has heard it, he has felt it, as I trust, it became him to do.

But, it may be said, such was his letter to Mohammed Reza Khan. These are professions only: what are the orders which he gave to Mr. Middleton, who was Resident upon the spot, which orders he was to carry into execution? And here, again, I beg to refer your Lordships to the evidence, which contains the very orders given to Mr. Middleton, in page 273 of the printed Minutes, in the Appendix. In this letter, Mr. Hastings says to Mr. Middleton:—

His directions to Mr. Middleton respecting the arrest.

"The command is peremptory, and requires immediate execution; neither will the urgency of the occasion admit of delay. This, therefore, is to require you that, upon the receipt thereof, you do immediately arrest the person of Mahomet Reza Khan, and send him under a sufficient guard to Calcutta; allowing him only the time necessary to furnish himself with such conveniences as he may want on his way. Your own disposition will make it needless to recommend that every mark of tenderness and respect be shown him, consistent with the literal performance of this service."

These were the orders of Mr. Hastings to Mr. Middleton. The language is too plain, too intelligible, to need any comment from me. Till expressions can change their meaning,—till things can alter their nature—till respect can become outrage—till tenderness can become cruelty—I leave to your Lordships to pronounce how far the honourable gentleman has succeeded in imputing to Mr. Hastings that

he executed this cruel order in a manner "congenial to his own cruel disposition!"

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With respect to the sequel of this transaction, your Lordships will find it in the same page, in a letter from Mr. Middleton to Mr. Hastings; which brings me to the third assertion made by the honourable Manager; that is—that Mohammed Reza Khan was dragged down to Calcutta. And, when I say dragged, I do not mean to fix the honourable gentleman to a literal meaning of a figurative expression; though I have, I feel, some cause to complain that figurative expressions have so frequently occurred in the course of this inquiry. All I understand the honourable Manager to have stated by "dragged down" is this:—that more severity was used than, under all the circumstances, the occasion required. Now your Lordships will hear the account given of the execution of this order by Mr. Middleton himself, and then judge how far the assertion is founded, that Mohammed Reza Khan was, by order of Mr. Hastings, dragged down to Calcutta in the manner the honourable gentleman states.

Severity imputed to Mr. Hastings in the removal of Mohammed Reza Khan to Calcutta.

Mr. Middleton states:—

"As you were pleased to intimate a wish that I should avoid a personal interview with the Nabob, I deputed Mr. Anderson, one of my assistants, to wait upon him with a letter from me, and to communicate the disagreeable orders I had received regarding him. At the same time, an officer, with eight companies of sepoys, was detached from the brigade to expedite the execution of these orders, and to guard against any evil consequences which might have ensued in the city. Apprehending that this alarm would create some disturbance, I went myself with a part of this force, joined to some companies of pergunnah sepoys, to the killah, with a view to explain the matter to the young Nabob, and to obviate any consternation or surprise which might have seized him from an event thus sudden and unexpected; and, at the same time, to prevent any irregularities which, at this critical juncture, the Nizemut sepoys or the Nabob's own servants might have been tempted to commit. But I had the satisfaction to find that, however prudent circumstances might have made these measures appear, there was, in fact, no absolute necessity for their adoption, I did not discover the least tendency to tumult or disorder throughout his excellency's dominions; and so little inclination had Mahomet Reza Khan to oppose or impede the immediate execution of your orders, that he was no sooner acquainted with the purport of them than he made a voluntary resignation of himself and the effects to the officer who was deputed to take him into custody. And here I should not do justice to the calm submission with which he met his unhappy fate, was I not to notice the readiness he manifested to comply with your orders in their fullest extent; and, so far from wishing to protract the period of his departure from hence, I can venture to assure you, you cannot be more impatient for his arrival in Calcutta than he appears to be."

Mr. Middleton's account.

Readiness of Mohammed Reza Khan to submit.

His desire to proceed to Calcutta.

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This man, who is represented by the honourable Managers as having been by Mr. Middleton, in the execution of the orders of Mr. Hastings, "dragged down to Calcutta," is represented by Mr. Middleton, making the return to Mr. Hastings of the execution of these orders, as having readily submitted to them, and professed a desire equal to that of Mr. Hastings of being at Calcutta, in consequence of the orders that were given!

Illegal detention of Mohammed Reza Khan imputed to Mr. Hastings.

With respect to the fourth and only remaining assertion —having now examined the veracity of the three former— that is, that Mohammed Reza Khan was kept at Calcutta for the greatest part of two years under accusation, and without even a trial being attempted to be held upon him, it is only necessary to refer your Lordships to the evidence which upon that subject the honourable Managers themselves have given, in page 998 of the printed Evidence.

Orders of the Directors respecting the inquiry.

Your Lordships know that, in the letter which I have already had occasion to mention—I mean the letter of the 28th of August, 1771, ordering the arrest of Mohammed Reza Khan and a future inquiry into his conduct—the court of Directors expressly commanded Mr. Hastings to avail himself of Nundcomar, as the most fit and proper person to investigate that conduct. He did so in the execution of this order; and your Lordships will find that, day after day, time after time, this very man was applied to by Mr. Hastings and the members of the Council, to give them that information without which they could not proceed; and they state, in the letter of the 24th of March, 1774, that they had been unable to do that, solely owing to the conduct of Nundcomar. Mr. Hastings there states:—

The prolongation of the inquiry owing to the contumacy of Nundcomar.

"All the accounts on the heads of the charge which I have ever received from Nundcomar stand upon record; and they are such as appear more calculated to acquit Mahomet Reza Khan than establish any proofs against him. He has refused, I know not why, although I have used every means for upwards of ten months past, both with him and his son, which could operate either on their hopes or fears, to obtain them. They were not delivered till the latter end of January last, accompanied with the promise of a separate proof of embezzlement in the article of exchange, which, after fresh importunity both from myself and from the Board, was transmitted so late that they arrived only on the 15th of January. Nor did these, more than any other paper furnished by Nundcomar, afford anything like proofs, but only reiterated charges, without one voucher or the least aid that might direct us to one. I am at a loss to discover the secret spring which governs the mysterious conduct of this man. As I am certain he is impelled by nothing less than a desire to favor Mahomet Reza Khan, it might suit well with his

private views to procrastinate the issue of the inquiry, although it would be little consistent with the credit or justice of your administration to prolong it to a further period. 9 MAY 1793.

Here, then, it appears that, with respect to this last assertion of the honourable Managers, from the evidence produced by themselves, the delay was entirely owing to Nundcomar, whom the court of Directors had ordered Mr. Hastings to employ; and that, after a certain period of time, Mr. Hastings would no longer suffer that inquiry to proceed, but himself put an end to it.

The inquiry terminated by Mr. Hastings.

But, my Lords, after all, what is it that shocks the feelings and tortures the reflection of the right honourable gentleman? An accusation that lasted upwards of two years indeed—and much was it to be lamented! But who was the cause of it? Nundcomar, the object of the honourable gentleman's panegyric. To whom is it to be imputed that it continued no longer? To Mr. Hastings; on whom, however, falls the honourable gentleman's enmity; Mr. Hastings having, at the end of that time, put a period to the inquiry, declaring that it would be repugnant to every principle of reason and justice that a criminal inquiry should, under any circumstances or pretence whatever, be protracted to a future period. Thus declared, thus thought, thus acted, Mr. Hastings, in the case of Mohammed Reza Khan. But to a mind so sensitive as that of the right honourable gentleman—to feelings so tremblingly alive to the tardy progress of justice—what must the sensations of such a mind be when, turning from the contemplation of the case of Mohammed Reza Khan, whose sufferings at any rate are past, who at this moment can neither be afflicted at the remembrance of them nor consoled with the sympathy of the right honourable gentleman, he has only to turn round and behold Mr. Hastings, not indeed in the second, but in the sixth year of his trial, on a charge originally preferred by the right honourable gentleman himself! To that right honourable gentleman I impute no blame; but, at least, it ought to teach him this lesson—that it is possible that a criminal inquiry may continue during two years, without any blame whatever being due to the prosecutor or to the judges. And, if that is the case, at least let me hope that your Lordships' pity will not all be bestowed upon Mohammed Reza Khan; that a little of it, at least, may be given to Mr. Hastings; unless we are so made as to be more strongly affected by what we hear than what we see—by what is past than what is present; and

The trials of Mohammed Reza Khan and of Mr. Hastings compared.

9 MAY 1793. unless every feeling of the mind is to be inversely [proportioned to the cause which awakens it].

My Lords, I have now gone through the representations made by the right honourable gentleman with respect to the conduct of Mr. Hastings, in the execution of this first step of the orders of the court of Directors. I will close this part of the subject with pledging myself hereafter to produce a document in evidence to your Lordships, which the honourable Managers have not thought fit to bring forward to your notice, in which, after the most full and complete information given to the court of Directors by Mr. Hastings and the Council, with respect to every part of their conduct regarding Mohammed Reza Khan, the court of Directors declare themselves completely satisfied with the propriety and justice of every part of it. It will be for your Lordships to say, whether you will adopt, after all you have heard, the opinion of the court of Directors or the representation of the right honourable gentleman.

Approval by the Directors of the conduct of Mr. Hastings.

Their order for the appointment of a minister to the Nawab.

My Lords, I now come to that which was the next measure that was to follow the arrest of Mohammed Reza Khan. And, in this letter of the 28th of August, 1771, your Lordships perceive that the court of Directors had expressly ordered that a fit person should be appointed to succeed him in the office of minister and guardian to the Nawab. And, my Lords, this brings me to consider the terms in which the Charge is framed. Your Lordships will find that the Charge states, in the 20th paragraph,—

"That the court of Directors did, by a letter bearing date the 28th of August, 1771, inform Mr. Hastings that they were fully sensible of the expediency of supporting some ostensible minister in the Company's interest at the Nabob's court—meaning the court of Mobarick ul Dowlah aforesaid—to transact the political affairs of the Sircar or Government; and they trusted to the local knowledge of him, the said Warren Hastings, to select some person well qualified in the affairs of Government to succeed Mahomet Reza Khan."

Thus far, then, we get, that the Charge professes to recite the orders of the court of Directors for the appointment of a proper person to succeed Mohammed Reza Khan, in the two offices of guardian to the Nawab and minister of his government; and, having stated this order, it then proceeds to allege,—

The appointment of Munny Begum.

"That the said Munny Begum had been originally in a low and degraded condition, without education, unacquainted with the affairs of Government, and then lived secluded in a zenana and retired from the world, whereby the said Munny Begum was totally unqualified for dis

charging the duties of guardian to the said Nabob and for governing his dominions: so that the said Warren Hastings, by the appointment of Munny Begum, as aforesaid, not only acted corruptly and illegally, but violated the orders of the court of Directors." 9 May 1793.

And, my Lords, this appointment of the Begum, represented as in obedience to the orders of the court of Directors, occupied a considerable part of those observations on which the right honourable gentleman who summed up this part of the case thought fit to rely, in support of it. Now nothing can be more clear than this;—that the Charge represents the appointment of Munny Begum as if it were held out by Mr. Hastings and the other members of the Council to be in execution of that order of the court of Directors which commanded the appointment of a fit person to succeed Mohammed Reza Khan; and in the unfitness of the Begum, compared with the office which Mohammed Reza Khan held, consists the essence of this Charge. That is the foundation upon which it stands. What was the office that Mohammed Reza Khan held? It was that of naib subahdar; and I admit, that, if Mr. Hastings had appointed Munny Begum to the office of naib subahdar, which, however, the Charge alleges as the office held by Mohammed Reza Khan, it would have been a disobedience to the orders of the court of Directors. But here again I pledge myself to prove that, from beginning to end of this part of the Charge, there is not one particle of it that accords with the evidence given of the truth and real state of the transaction!

Her alleged unfitness for the office.

The honourable Managers had given in evidence the orders of the court of Directors for the removal of Mohammed Reza Khan—which orders your Lordships will find in page 971—and they express themselves in this way:—

"The Managers for the Commons stated they should next proceed to prove the removal of Mohamet Reza Khan from the office of guardian to the Nabob, the nature of that office,"—

that is, the office Mohammed Reza Khan filled and from which he was removed, and to which, according to this, Munny Begum was appointed,—

"and the orders of the court of Directors as to the mode of filling it up."

In page 972, your Lordships will find that the honourable Managers gave evidence distinctly to show the nature of Mohammed Reza Khan's office; and the evidence which they gave, for the purpose of ascertaining it, is the description of the office of naib subahdar. Here then we have the

9 MAY 1793. honourable Managers distinctly stating that Mohammed Reza Khan was removed from the office of naib subahdar and that Munny Begum was appointed to that office. And on the comparing of the nature of the office with the unfitness of the person, as I before said, depends the whole of this charge.

It is curious to observe that the honourable Managers have contented themselves with merely giving in evidence different extracts from the consultation where the whole of these transactions occur:—the whole will be found in the Appendix, page 379. The consultation to which I allude is that of the 11th of July, 1772—a very important consultation for your Lordships to bear in your recollection. Before I consider the particulars of this consultation, it may be necessary to state to your Lordships that, upon the receipt of the orders of the court of Directors to abolish the office of naib diwan altogether—that is, to make a complete and entire change in the system of collections—and also to remove Mohammed Reza Khan, a Committee of Circuit was appointed to go up to Moorshedabad, to make the necessary inquiries, and to report them to the Board, and to recommend different measures to the consideration of that Board, as best suited to the circumstances of the times. The Committee of Circuit consisted of Mr. Hastings, Mr. Middleton, Mr. Dacres, Mr. Laurell and Mr. Graham.

Committee of Circuit to revise the system of collections.

Their report to the Board.

Your Lordships know that, at this time, the Board consisted of a President and of eleven other members; so that, of the twelve of which it was composed, five went up to Moorshedabad and seven went up to Calcutta; and it was the duty of the five to transmit to the seven at Calcutta all the information they could possibly procure, and, when that information was regularly laid before the Board, then they act upon it. Your Lordships will find, by referring to the Appendix—the page that I have stated—that, on the 11th of July, 1772, these five gentlemen met, expressly for the purpose of taking into consideration the measures that were necessary to be adopted, in consequence of the orders to Mr. Hastings in the letter of the court of Directors of the 28th of August, 1771. The letter begins with reciting these orders, and then it proceeds thus:—

"The Committee are sensible of the expediency, remarked by the court of Directors, of holding out the authority of the country government to the European powers, in all cases wherein their interests may interfere with those of the Company; but we humbly conceive that, when they are acquainted with all the circumstances which the opportunity of

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present local information has offered to our notice, they will judge with us that it is neither necessary for that purpose, nor advisable for other reasons, to delegate an extraordinary permanent authority to any single minister of the Nabob."

Appointment of a naib subahdar.

Having stated this, they then go on and add the appointment of a naib subahdar, for such purposes as they judge necessary. And then they describe what is the office of naib subahdar; of which, your Lordships recollect, I have shown a description by the honourable Managers, as the office to which the Begum was appointed. They describe the office of naib subahdar in these terms:—

Description of the office.

"The office of naib subah, according to its original constitution, comprehends the superintending of the Nabob's education, the management of his household and the regulation of his expenses, the representation of his person, the chief administration of justice, the issuing of all orders and directions of all measures which respect the government and police of the provinces, the conduct of all public negotiations and execution of treaties."

In a word, every branch of the executive government;—and thence infers the honourable gentleman in his charge, by his evidence, and throughout his speech, and prefacing it as in disobedience to the orders of the court of Directors, he appointed Munny Begum to the office of naib subahdar, that he invested her with every branch of the executive Government.

The offices of guardian and subahdar treated as co-extensive by the Managers.

How does the honourable Manager prove this? In the manner that I have stated. First, he says that he will prove the removal of Mohammed Reza Khan from the office of guardian to the Nawab; then, that he will show the office that Mohammed Reza Khan held—that is, the office of guardian to the Nawab; and, to do this, he gives in evidence the description of the office of the naib subahdar. Here then the honourable gentleman has pledged himself to make out this proposition—that the office of guardian and the office of naib subahdar were co-extensive; and that, being appointed to the office of guardian to the Nawab, Munny Begum was appointed to the office of naib subahdar. I have read the description of this office given by the Committee of Circuit at the time. For what purpose was that description given? Your Lordships will find it in the subsequent part of the same consultation.

Perversion of evidence.

But, before I read the next part of the consultations, I must draw your Lordships' attention to this most extraordinary circumstance. Your Lordships, on referring to this evidence, will have the goodness to look at it, not in the

9 MAY 1793. course of proof, where the honourable Managers have given detached extracts, perverting, as I pledge myself to prove, the meaning of the whole, but your Lordships will look at it as one entire composition, in the Appendix, where it now appears; and your Lordships will find that the first extract which the honourable Managers have given in evidence is that which describes the office of naib subahdar. The next extract, omitting all intervening matter, begins with these words:—

"On these grounds, we are of opinion that the office of naib subah be totally abolished; that a person not liable to the above objections be appointed guardian to the Nabob, and entrusted with the care and rule of his family."

Now, it happens most unaccountably—and it is a thing without parallel in a criminal prosecution—that, though the second extract begins with the words "on these grounds," and talks of the appointment of "a person not liable to the above objections," the intervening matter between the two extracts they have given in proof, setting forth distinctly all the grounds, specifying all the objections, is perfectly omitted by the honourable Managers, though it immediately connects the two extracts which they have given in evidence!

What, then, were these grounds on which the Committee of Circuit thought it necessary to act upon this occasion? Let them speak for themselves. They state, after having described the office of naib subahdar, that—

Objections to the continuance of the office of naib subahdar.

"By the exercise of such extensive powers united in the same person, the rights and prerogatives of the ancient government will still be preserved, and the minds of the people, instead of being familiarized to the authority of the Company, will be taught to look forward to the time when the Nabob shall resume the sovereignty and state of his predecessors, from which his present youth excludes him."

They then go on and say, that—

"Whatever may be the future determination of the court of Directors, it is our duty to take such measures as may ensure to our superiors the option of acting according to their own ideas of justice and propriety."

What are those measures?—

"To retain openly and in our own hands the whole conduct of government for the present; to accustom the people to the sovereignty of the British nation; to divide the officers of the nizamat, and to suffer no person to share in the management of the Nabob's domestic affairs who, from birth, rank, personal consideration, or from actual trust, may have it in his power to assist his master with the means, or even to inspire him with the hopes, of future independence. On these

grounds we are of opinion that the office of naib soobah be totally abolished."* 9 MAY 1793.

So that your Lordships perceive, though the Charge stands upon this foundation—that Mr. Hastings appointed the Munny Begum to be that which Mohammed Reza Khan was, that is, naib subahdar, the very office of naib subahdar was abolished previous to the appointment of the Begum, as dangerous to the existence of the state! And, that office being abolished, the Begum was appointed merely to that which is expressly specified, namely, to be guardian to the Nawab, with the care and rule of his family.

Suppression of the office.

The Begum appointed merely guardian to the Nawab.

Confusion of the offices of guardian and naib subahdar.

Now, my Lords, do but attend a little to the way in which this evidence has been given. The first extract the honourable Managers give in evidence is the passage which I have read from the consultation, 11th of July, 1772, describing the office of naib subahdar. The next extract is that from the court of Directors, ordering the appointment of a fit person to succeed Mohammed Reza Khan. So that here they first give in evidence the description of the office, which is made a reason for the abolition of the office, preceding the orders of the court of Directors; as if the court of Directors were conscious at the time of the extent of this power and had accordingly issued the orders. So that the year 1772 comes before the year 1771, and the answer takes place of the letter to which it is an answer! The evidence does not stop there; for, when the honourable Managers have to make out the nature of the office of naib subahdar, they prove it by giving in evidence a description of the office, in order to show the office of guardian to the Nawab; whereas the passage I have now read proves that the office of naib subahdar was abolished, and that the Begum was appointed to the office of guardian, and not of naib. Then what becomes of this charge, which represents this proceeding of the Committee of Circuit as if it meant to be an execution of the orders of the court of Directors—that is, to invest the Munny Begum with all the extensive powers of that office, which office they expressly abolish on account of the extent of its power? The whole of this part of the charge of the honourable Managers vanishes.

There is but one document more, with respect to this part of the subject, upon which I will trouble your Lordships with any observations, and you will find it in page 979. In

* Printed in the "Minutes of the Evidence," p. 2098.

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Alleged delegation of supreme power to the Begum.

the month of September, which is about four months after the period of which I have been speaking, an application was made to the Board by the Begum for certain powers, to enable her to execute the office of guardian to the Nawab; and the honourable gentleman, taking a part only of that application, and rejecting the rest, avails himself of particular general words which occur in it, unrestrained by the context, and [contends,] therefore, in respect of that document, that the whole power of government was given to the Begum—this power which I have proved to have been annihilated from the person of naib subahdar and transferred to the President and Council at Calcutta.

The next extract is in page 979 of the printed Evidence, where your Lordships will see that the honourable Manager states, that he will prove that the whole powers of the Government were given to Munny Begum. How these powers were given to her, which no longer existed at this time, I leave to the ingenuity of the honourable Managers to explain. But here I must beg your Lordships not to content yourselves with merely looking at this extract, but that you will refer to the Appendix, where you will find that the requests made by the Begum related to this power which was necessary to enable her to perform, not the office of naib subahdar, which she had not, but the office of guardian to the Nawab; that they relate to the care and management of his household. And yet these very words which explain the nature of the application are omitted in the extract!

But from the words—" you are undoubtedly the mistress to confirm, dismiss and appoint, whomever you shall think fit in the service and offices of the nizamat," the gentleman infers that all the powers were vested in this woman. But he infers it, not merely in opposition to fact, not merely in repugnance to evidence, but infers it in direct contradiction to the evidence he has himself given, in a subsequent part of these proceedings. For your Lordships will find that, in a page to which I will give a reference hereafter, the honourable Manager has given evidence to prove that, by those very proceedings which happened in the year 1772, not merely the office of naib subahdar, with all its powers, but the power of the Nawab himself—of whom the naib subahdar could be at best but the minister—was entirely transferred to Mr. Hastings and the members of the Council.

The supreme power transferred to Mr. Hastings.

The extract is in page 1071, where your Lordships will

find that the honourable Managers pledged themselves to show that the use made of the Nawab's name, for the purpose of dispossessing Mohammed Reza Khan from the office to which he had been appointed by the court of Directors, and of dividing his salary between the Munny Begum and Raja Goordass, was an imposition; that the Nawab was a person of no power whatever, but a mere pageant and instrument in the hands of Mr. Hastings. Now, if the Nawab was a person of no power whatever, I should be glad to know how it was possible that the minister of the Nawab, who could only represent him, could have more power than the Nawab possessed! Here again the honourable Managers must prove that the stream can ascend higher than its source, before they can establish this proposition. But in respect of what evidence is it that he states that the Nawab was deprived of all power? In respect of these very proceedings —these two which followed—the removal of Mohammed Reza Khan and the appointment of Munny Begum. So that here again I have it, in the last instance, on the concession of the honourable Manager himself, turning this part of the case into an instrument of crimination against Mr. Hastings, that, so far from giving all these great powers to the Begum, who, as a woman, was incapable to execute them, the power was annihilated in the instance of the Nawab. He became from that time a pageant and an instrument in the hands of Mr. Hastings, to whom, as Governor General, in common with the rest of the Council, all those powers were transferred which he is stated as criminal in having bestowed upon Munny Begum!

Inconsistency of the charge.

My Lords, I trust now this part of the case stands fully explained, and that, so far from the appointment of the Begum being ever represented by Mr. Hastings, or any member of the Council, as an act professed to be done in obedience to the orders of the court of Directors, they plainly, fairly, publicly and openly, submitted to the court of Directors that no such orders ought to be carried into execution; that, instead of a fit person being appointed to the office, the office was itself unfit to be continued. They state their reasons to the court of Directors, and desire to pursue a different line of conduct if they should judge otherwise. Thus the case stands with respect to the nature of the office to which this person was appointed.

Alleged unfitness of the Begum.

The next charge which the honourable gentleman brings respects the appointment of this person, namely, Munny

9 MAY 1793. Begum, as far as she was stated to be improper for the office; and your Lordships will find that, in page 976, the honourable Managers state they will next proceed to prove the impropriety of the appointment of the Munny Begum—first, by showing who she was. Admitting then that, in other respects, she might be proper for the office, still, according to the honourable Manager, the peculiar circumstances of her situation made her unfit to execute it. And your Lordships have heard a great deal with respect to the supposed profligacy of the conduct of this person, at least as far as it consists in the speeches which we have heard from the honourable gentleman in this hall; but, in respect of evidence, it all resolves itself into that one document which I am now about to state to your Lordships, and which you will find in page 976—that, on a consultation on the 24th of July, 1775, there is recorded a paper which purports to be an account of the Begums of Jaffier Ali Khan, transmitted to the board at Calcutta by a person of the name of Nunduroy, and that paper begins with these words—"Every day's news is transmitted you." The news which this curious collector transmitted to the board at Calcutta in 1775, as the news of every day, your Lordships will shortly find to be events that happened at least thirteen years before. He then proceeds to give an account of the Begums of Mir Jaffier, and, when he comes to the case of Munny Begum, the substance of his representation is this:—that she was the child of a widow, who, not being able to bring her up, "gave her to a slave girl belonging to Summin Ally Khan, whose name was Bissoo. During the space of five years she lived at Shahjehanabad, and was educated by Bissoo after the manner of a dancing girl." Afterwards the Nawab took her into his family, and she gave birth to the Nawab Nujem-ud-Dowla. This is the whole which this person transmits as the news of this day.

Sketch of her life adduced by the Managers.

And, first, I would ask your Lordships what day?—The day when Mr. Goring was at Moorshedabad—the bright day that brought forth every adder—the day that shone upon Nundcomar—the day that [witnessed the charges of] this very Nunduroy,* afterwards accused and convicted of falsehood by Mr. Goring himself—the day when every fiction that could gall the feelings and wound the honour of Mr. Hastings winged its flight to Calcutta, in hopes of meet-

* See Appendix to the "Minutes of the Evidence," p. 412.

ing a favourable reception there. On such a day was this important intelligence sent. But let every word be stamped with the character of truth. Instead of being drawn too harsh, let it be sketched with too gentle a hand: I have no objection. I will not inquire who Munny Begum was when five years old. I will not inquire what happened to her in her progress through childhood to the state of woman. Still less will I do this to stop precisely at the moment when, no longer an infant, no longer a slave, she became at liberty to think and act for herself. No! I will begin my inquiries precisely where this despicable scrawl concludes. Tell me what she became when fortune lifted her from the low situation into which untoward fate had originally cast her. Show her me when freed from the heavy chains of hard necessity. Tell me how she conducted herself when she became the companion, the friend, the wife, of Mir Jaffier—the mother of his son, the son who afterwards ascended his throne. Thirty years of her life revolved in these different situations. But thirty years are no part of the life of woman, in the estimation of the right honourable gentleman. Thirty years, composing the middle period of life which furnishes all these transactions that fix rank, ascertain character, that give estimation, are to be sunk and suppressed altogether! When rank and character and estimation are the inquiry, this busy, active and fruitful, period is to be changed into one long night, when sleeping memory is to forget its office, darkness and oblivion are to hang upon it; and, in order to know whether the Begum was fit to be appointed to the office of guardian to the Nawab, we are to go back thirty years, in order to ascertain who was her mother, where her cradle was rocked, what became of her when five years old! No; this is not the manner in which your Lordships will pursue the inquiry. That, therefore, which the honourable Manager has in point of fact been defective in, he will give me leave to supply, and to supply from evidence which he has himself produced.

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Unimportance of her early history.

Your Lordships will find that, in page 977 of your Minutes, the honourable Manager himself distinctly states this, to prove that Munny Begum had no right to the superiority of the family, and that the Nawab had a mother living who had a right to it, but was dispossessed by Mr. Hastings, though she had been placed in that situation by the order of the Council. And, my Lords, the evidence which the honourable Manager produces is a paper from

Prior claim to the office by the Nawab's mother.

MAY 1793. Mohammed Reza Khan;—Mohammed Reza Khan being, as your Lordships know from the documents which are in evidence before you, the antagonist and enemy of this very person of whom he professes to give an account, in the paper in question. He was certainly as well acquainted with the local usages as the right honourable gentleman—certainly as able to ascertain what was the secret history of Munny Begum—certainly as conversant with all those circumstances which qualified or disqualified her for the office—as the right honourable gentleman can be. Let us see what Mohammed Reza Khan, this great and good man—so called by the honourable Manager himself—states, with respect to this person, whom he has represented as a slave and a prostitute, for the purpose of bringing odium upon her, at the time when they were inquiring whether she was fit to fill the office of guardian of the Nawab.

Evidence of Mohammed Reza Khan. "With respect to your Excellency's observations concerning the Begums [the true state of the affair is this:—The most respected of all Myr Jaffier's Begums, for manners and family, was the mother of Sadek Aly Cawn. After the death of Sadek Aly Cawn, as Nigim ul Dowlah was the next son, his mother rose to the pre-eminence. After Myr Jaffier's death, when the Nizamat devolved to Nigim ul Dowlah, his mother derived her claims from her son's station as Nizam; and, whilst Syfe ul Dowlah possessed the government, she was upheld in the same dignity, as respect is due to all the wives of Myr Jaffier] and the mother of Nigim ul Dowlah."

That is the Bow Begum—so disqualified for the execution of this office, according to the honourable gentleman, that the mere appointment of her of itself constitutes a high crime and misdemeanour in Mr. Hastings! Mohammed Reza Khan, his own witness, states that she has been appointed by the two brothers in the place of superior in the family of the Nawab;—so stated by the right honourable gentleman, as the introduction of the proposition which this evidence was to prove! Now, recurring from the evidence to the Charge, you will find it there distinctly stated that Mr. Hastings appointed Munny Begum to the office of superior in the family of the Nawab; and in that appointment is the criminality stated to consist, she being peculiarly disqualified for it. It is proved, in point of fact, by the evidence of Mohammed Reza Khan, that she had filled the same office during two successive reigns; and, though Mohammed Reza Khan, who was known to be friendly and connected with the other Begum, wished her to be invested with all the power

Recommends her being associ-

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ated in it with the Bow Begum.

he could—though he states the right to be in her—yet Mohammed Reza Khan proposes that this person, thus disqualified according to the honourable gentleman, should be joined with the other Begum in the execution of the office!

His evidence subversive of the statement of the Managers.

What then becomes of all the observations that we have heard from the honourable Manager, when these facts result from his own evidence, namely, that this woman, Munny Begum, had, during two successive Nawabs being upon the musnud, executed that office of superior to the family;—and further, that, even in a case where Mohammed Reza Khan declared the right to be in the other, yet, so conscious was he of the superior abilities and character of Munny Begum, that he expressly recommends, in contradiction to his own idea of the right, that this woman should be joined to the younger Begum in the execution of the office of superior of the family—for which appointment Mr. Hastings at this moment stands impeached! Thus then the case stands with respect to the evidence that has been furnished by the honourable Managers themselves, with regard to the impropriety of the Begum for this appointment.

Acquiescence of the Committee of Circuit in the appointment.

But, my Lords, the case goes even much further yet. For your Lordships will find that hitherto all this has been considered as if it had been the sole and separate act of Mr. Hastings; but, upon referring to the consultation to which I have already drawn your Lordships' attention—that is, the consultation of the 12th of July, 1772, your Lordships will find this:—that, that committee consisting of five different persons, every one of them declared, at the moment, that, with all their local knowledge and experience of the different characters in that country, they knew no person so proper for the office as that Munny Begum whom they appointed. They declare this under this most extraordinary circumstance. For, when I come to explain a little more distinctly the transactions of that period, I will satisfy your Lordships, beyond a possibility of doubt in any one mind whatever, that your Lordships must take it to be the pure, genuine, opinion of every man who was in Bengal at that time, that, of all the persons who could be appointed to that office, the person selected in the case of Munny Begum was, without all doubt, the most fit and the most proper.

To Mr. Hastings, undoubtedly, in a subsequent part of this Charge, corruption is imputed with respect to this appointment. But your Lordships may recollect that, from the particular corruption which is imputed, it excludes the

9 MAY 1793. idea of any other person being connected with him in it; that is, Mr. Hastings is said to have received a lac and a half for the appointment. But it is not imputed to any of the four other persons who were with Mr. Hastings, that they received anything for the appointment; and, from the whole course and nature of the evidence, it is quite impossible that they should. Here, then, you have at least four persons, together with Mr. Hastings, to which four persons, according to the honourable Managers themselves, no corrupt motive can be imputed. What, then, is the description of those persons? They are persons who had been a great number of years in India. They were, of all others, those who were most likely to possess accurate information and to form a sound judgment—supposing that they were prepared to do it—in an honourable and disinterested way; and I have shown that was the case with respect to them, because no corruption is imputed. And yet every one of these four persons did put their names to the document which is in evidence, in which they state "they know no person so fit as Munny Begum to be appointed to the office of guardian to the Nawab." Then on what ground is it that we are to get rid of all this evidence; first, the testimony of Mohammed Reza Khan; next, of those four gentlemen asserting the same fact with respect to the propriety of the appointment of this person? But it does not rest here; for your Lordships will find that, in consequence of the orders of the court of Directors upon the 27th of August, 1772, it becomes necessary for Mr. Hastings to employ Nundcomar, to inquire into the conduct of Mohammed Reza Khan. But the orders were, that he should not be put into any ostensible situation of trust. The way, therefore, in which Mr. Hastings proposed to execute this order, in which he could not communicate with the other members of the Council, was, by appointing Raja Goordass, who was the son of Nundcomar. But so extraordinary did it appear to all these four persons that Mr. Hastings should propose any measure of that sort, that, though they agreed with him as to the propriety of the appointment of the Begum, they dissented from him in the same moment as to the appointment of Raja Goordas. Thus then your Lordships get these facts;—that, with respect to the five persons who recommended it to the Board in the first instance, there is no pretence to impute improper motives to four of the number; their differing with Mr. Hastings in the appointment of Raja Goordass

Corrupt motive imputed to Mr. Hastings.

Appointment of Raja Goordass proposed by Mr. Hastings.

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shows the contrary; and yet every one concurred with him in opinion as to the propriety of the appointment of this woman. But it goes further yet; for, when the proceedings of the Committee of Circuit were communicated to the Council at Calcutta, your Lordships will find that, though they differed as to the appointment of Goordass, they were unanimous as to the propriety of the appointment of the Begum, and they—all the twelve individuals who then constituted the Government of Bengal—each set his name to a letter asserting it as a fact to the court of Directors, that their experience of all the different characters in Bengal did not enable them to point out any one person so proper for the office to which the Begum was appointed as herself.

Approval by the Council of the appointment of Munny Begum.

My Lords, I will go further yet, for I will produce that which the honourable Managers also have not thought fit to bring forward, upon this occasion. The Charge consists in disobedience to the orders of the court of Directors, by the appointment of this woman. I will lay before your Lordships the answer which the court of Directors gave to the President and Council, upon full knowledge of all these events; and in which, so far from considering it as a disobedience of their orders, the court of Directors declare their entire acquiescence, their perfect satisfaction, in all that had followed; and particularly conveyed their thanks to Mr. Hastings for his conduct in the appointment of this woman—for which Mr. Hastings is now impeached, as a disobedience of the orders of those persons. The moment they were apprised of all his reasons, they returned him their thanks and expressed their gratitude to him!

Approval of Directors.

With respect, then, to this part of the case, the Charge seems to me to result to this:—I have shown that the foundation of the Charge is at an end; for that, so far from Munny Begum being appointed to the office which the Charge describes, the office itself was abolished. Being, then, appointed to another office, it would not signify for the purpose of this Charge whether that appointment was proper or not, but it does signify to the honour of Mr. Hastings; and, considered in this light, I now put it to the sense, to the judgment and to the honour, of every noble Lord, whether there is any one individual who can [take upon] himself, at the distance of twenty years from a transaction, without the advantage of local knowledge and experience, at this moment to say, that every one of those twelve persons asserted that to the court of Directors which he

9 MAY 1793. knew to be false, though no motive is even offered by conjecture for doing it; and that your Lordships are not only prepared to say that the appointment itself is improper, but to go further, and, in respect of the impropriety of that conduct, to infer that the conduct of Mr. Hastings amounts to a high crime and misdemeanour?—And with that observation I leave this part of the subject.

Corrupt motive imputed to Mr. Hastings.

My Lords, having now discussed that part of the Charge, which relates to the impropriety of the appointment of Munny Begum considered by itself, I next come to that which imputes to Mr. Hastings a corrupt motive for this appointment, and which, in effect, states that he received a sum of money as his inducement to it. With respect to any evidence of corruption that may result from the impropriety of the appointment, that is at an end; for, if I have succeeded in showing that the appointment itself was proper, of course it excludes all such evidence. Your Lordships, therefore, must have, not consequential, but direct and positive evidence of that fact which the Charge states, namely, the receipt of a sum of money by Mr. Hastings, as a reward for the appointment of this person.

Mr. Hastings' admission of the receipt of a lac and a half of rupees.

My Lords, with respect to the fact itself, that is, the receipt of the sum of a lac and a half of rupees, that is not denied. The honourable Managers have distinctly made it part of their case that Mr. Hastings never did deny it. They have relied upon it, as a circumstance in proof, that no such denial ever can be found on the part of Mr. Hastings. Nor can there:—Mr. Hastings never did deny it in any one moment, or in any one hour, of his life. My Lords, since he has been at this bar, even if any doubt could arise with respect to the conversations that he might have held upon the subject—or rather the entries upon the consultations—before, Mr. Hastings has distinctly, plainly and openly, avowed that, during the time that he was at Moorshedabad, when all those different regulations were taking place, he received the sum of a lac and a half, being the customary allowance for entertainment, or what is called the [nazr], of which Mr. Hastings has declared, from that hour to this, he did not individually profit.

A customary allowance for entertainment.

Before I come to consider the precise terms in which this Charge is framed, it may be necessary to make one or two general observations upon the transaction itself. Your Lordships know that Mr. Hastings went up to Moorshedabad as President of the Council at Calcutta, some time in the

month of July, in the year 1772. It is in evidence that he returned to Calcutta in the month of September, in the same year. Mr. Hastings, therefore, continued at Moorshedabad three months, representing the British power there in the capacity and character of Governor General. What the suite Mr. Hastings had with him—what the expenses to which he would necessarily be put—must not be measured by the ideas we entertain on the occasion. We have only to refer to our own statute books to learn that the scale of expense of persons in public stations in India must necessarily be greater than that of persons in public stations here. In point of fact, Mr. Hastings, representing the British nation, resided during a period of three months at the court of the Nawab of Bengal. During that time, it appears in evidence that a sum of a lac and a half of rupees, amounting to an allowance of 2,000 rupees a day, was received by Mr. Hastings as the expenses of entertainment while he was there; and we state that the receipt of that sum was in conformity to a custom which prevailed generally throughout India, and which had obtained in the instance of all his immediate predecessors. I apprehend, therefore, that I shall feel no sort of difficulty in establishing this fact—that the usage—whether right or wrong, I do not now inquire—but that the usage of allowing a certain sum, in lieu of paying expenses, to persons residing at the courts of each other has generally prevailed throughout India, and, in particular, has prevailed in Moorshedabad, in the instance of former Governors. Two thousand rupees a day was then the allowance; and at this rate Mr. Hastings received it for three months. It naturally will be said that it would be an odd usage to prevail, that the Governor General of Bengal should receive 2,000 rupees a day when at Moorshedabad, and that the Nawab should receive nothing when at Calcutta. If I prove the usage to exist, that will be no answer. But I will show—and this is a fact of which I have never been apprised till the moment when I address your Lordships—that, in the instance of the Nawab of Bengal, when resident at Calcutta, he was allowed at the rate of 1,000 rupees a day, precisely upon the same footing as Mr. Hastings received the allowance at Moorshedabad, that is, for the expense of entertainment.

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General usage.

Similar allowance made to the Nawab at Calcutta.

Here, again, the honourable gentleman, perhaps, will be disposed to make a difference between a single payment and one that continued during a length of time. But that dis-

9 MAY 1793. tinction will not serve him; for I will show, in the case of the allowance to the Nawab, for which I will produce the accounts of the Company during the time Mr. Verelst was President, that in 1768, by an account to which Mr. Hastings could not be privy, because he was then in England, he received a payment of 1,000 rupees a day;—not for a day—not for a week—but for a month together! Here, then, I trust the honourable gentleman will not be disposed to make the offence on the part of Mr. Hastings consist in the specific difference between 1,000 and 2,000 rupees a day; or between one month and three months. For will he admit to me that the Nawab received 1,000 rupees a day during a month, and, therefore, if Mr. Hastings had received 1,000 rupees a day during three months, then there would be no criminality in it? If he does not admit that, he will be driven to deny altogether the existence of such a usage; but the existence will be proved beyond all doubt in the manner I have stated.

The legality of the usage.

The question does not arise in this case as to the legality of the usage; for I am very ready to state to your Lordships that there may prevail a great number of different practices, with respect to the receipt of emoluments by persons in public situations, which, if brought into a court of justice, perhaps, would not stand the test of legal investigation;—that is, that the party who had received them would not be intitled to retain them against the person who might claim them from him; but I am yet to discover that a case ever has occurred [in which, in accordance with] a usage in fact clearly made out as existing in the instance of every person, and which for a great length of time had prevailed, a particular individual, in the execution of a public trust, [accepted a present] received by all and by him in conformity to such usage in fact—that such conduct has been made the foundation of criminal charge. Undoubtedly it may become matter of future regulation; but, in the particular instance, it would be repugnant to every principle of justice—though it is only a usage, as we call it, that, in point of fact, existed, but could not be upheld by law—that the following that usage should be made the foundation of criminal accusation.

There exist innumerable instances in the administration of the government of this country. Strictly speaking, the salary of every officer is but a compensation for the labour of the office. The salary ought, therefore, to be proportionate. But will it be said that every man who receives more than a salary proportionate to the labour of the office commits a

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fraud upon the country? Undoubtedly not! Your Lordships know that, in the volumes of those able reports made by the commissioners of public accounts, these facts occur.

Irregularities practised by public officers.

We all know that, in the case of private trustees, if they make any interest of the money in their hands, they shall not retain it for their own advantage, but are bound to pay it over to the person for whom they are intrusted. By parity of reason, every public officer ought to do the same; but, in the course of these reports, your Lordships know, an instance is stated of balances to the amount—I know not at this instant of how much—but to a loss to the public of 300,000*l.* in the hands of the different representatives of four different paymasters. Now, if that was strictly investigated in a court of justice, the representatives of those persons would be liable to account to the public. But it never entered into the head of any man to prefer an information or indictment against any one of those persons, because they have given in to a practice which, when it is brought under public investigation, it becomes necessary to reform in future.

In this case, I might say on behalf of Mr. Hastings, if it were necessary to have recourse to such an argument—which it is not—if I establish to your satisfaction—which I pledge myself to do—that this payment was in conformity to such a usage having obtained in the case of his predecessor, and also in the case of the Nawab of Bengal, then there is a complete end of this Charge, as far as it respects the corruption of the transaction. But in this stage of the cause I must do justice to the honourable Managers; for—to speak of them fairly—they have not rested their accusation upon this ground, but they have said that Mr. Hastings took this sum, not on any such account; but that he took it, distinctly and specifically, in the shape and form of a bribe—in substance, as a compensation which he ought not to have received, for the appointment of this person to the office which she held. Being in the habit of conceding every thing, as much as I can, to the honourable persons to whom I am opposed, I might, for the sake of argument, admit that it was not right, notwithstanding this usage, to have received this sum, and that Mr. Hastings ought to have been the first to have reformed it. I might go that length;—but still that is not the Charge against Mr. Hastings in this instance; but the only question for your Lordships to decide upon is, whether Mr. Hastings took it in the manner and under the circumstances which the Charge suggests.

Specific corruption imputed to Mr. Hastings.

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Precise terms of the charge.

In what way then does the Charge impute to Mr. Hastings the receipt of this lac and a half of rupees? And for this purpose, that I may be accurate, I would have recourse to the terms of the Charge. Your Lordships will find, in page 45 of the octavo edition, the 19th paragraph of the Charge states that Mr. Hastings "did, at different days and times, between the 1st day of October, in the year 1772, and the 30th of September, in the year 1773, corruptly and illegally take, accept and receive, from one Raja Nundcomar, a native Hindu, high in office in the country government in India, or from some other person or persons, divers sums of money, amounting together to 3 lacs, 54,105 rupees, being equal in value to 40,000*l.* sterling, or some other large sum of money, as a consideration or bribe for the disposal of and appointment to certain offices in the gift of him, the said Warren Hastings, being such President as aforesaid." And then it particularly specifies the appointment of Munny Begum to the office of superior of the family of the said Nawab. So that here, your Lordships perceive, this money is distinctly stated to be a consideration or bribe for the appointment of Munny Begum to the office which she held. That is the Charge, and that is the question for your Lordships' inquiry.

The receipt of three lacs and a half originally imputed to Mr. Hastings.

My Lords, consistently with the Charge, the right honourable Manager who summed up the evidence, with his usual acuteness, puts this question upon its true ground. Your Lordships know that the first evidence which the Managers offered was, to prove that Mr. Hastings received three lacs and a half of rupees for the appointment of this woman to this office. The evidence the honourable Managers offered, after various fruitless attempts, they were not so happy as to persuade your Lordships to receive. When, therefore, the right honourable gentleman opposite to me came to sum up this evidence, he did that which it became him to do; confining his attention to the evidence only which had been given, he stated his case in this way;—he said, that, though they had originally stated that three lacs and a half had been received, yet he admitted the evidence only went to one and a half. "But," said the gentleman, "it makes no difference in point of guilt whether he took three, or only one lac and a half!" If he took it as a bribe for the appointment of the Begum, I admit to the right honourable gentleman it makes no difference whatever. But, on the other hand, that right honourable gentleman must admit this to me, that, if he did

Unimportance of the amount.

not take it as a bribe for the appointment of the Begum, then there is an end of the foundation of his argument; because his argument rests upon this—that, where a sum of money is taken upon the corrupt consideration of an appointment, it makes no difference whether it is three and a half, or one and a half. But that supposes that, whether three or one and a half, the corrupt inducement was precisely the same. Therefore the honourable gentleman has truly stated it makes no kind of difference. But, in stating that, he admits, as he must, that, in point of evidence, he is bound to make out that this was taken as a bribe for the appointment of this woman. 9 May 1793.

I have now, therefore, distinctly explained to your Lordships in what manner this stands upon the face of the Charge, and also in what manner the Charge has been explained by the honourable gentleman who summed up the evidence; the Charge being that of a bribe for this appointment.

I next come to consider the various consultations through which I will trace this inquiry, day after day, as they occurred; and, in the result, I pledge myself—and I am aware of the strength of the expression that I use—I pledge myself that not a doubt shall remain in the mind of any one noble Lord who hears me, that this sum was taken on the ground that Mr. Hastings states—that is, as a usual allowance for entertainment of the Governor General while at Moorshedabad, and not as a bribe for the appointment of this woman to the office, as the Charge suggests.

My Lords, that will form the next subject into which I mean to inquire.

CONTINUATION OF THE SPEECH OF ROBERT DALLAS, ESQ., COUNSEL FOR MR. HASTINGS, IN OPENING THE DEFENCE UPON THE SIXTH, SEVENTH AND FOURTEENTH, ARTICLES OF THE CHARGE, RELATING TO PRESENTS; 16 MAY, 1793.

16 MAY 1793.

MY LORDS, when your Lordships last adjourned, I had endeavoured, to the utmost of my power, to go through that part of the Charge which relates to the appointment of the Munny Begum to the office of guardian to the Nawab, with the care and rule of his family; in which respect the Charge imputed criminality to Mr. Hastings, with regard to the appointment. And, my Lords, I trust that I had completely satisfied your Lordships of these three particulars, which I conceive, with respect to that transaction, to be highly essential to the Defence:—in the first place, that the appointment, such as it was, did not profess to be an execution of the orders of the court of Directors; and yet the Charge represents that appointment as if Mr. Hastings had held it up in that light to those whose orders he had received.

In the next place, I referred your Lordships to the evidence, which, beyond all doubt, establishes that the appointment at the time was not the single and separate act of Mr. Hastings, but that it received the unanimous approbation of the Committee of Circuit, of which he was only one. Beyond this, I have also proved, that, in the same manner, it received the unanimous approbation of the board at Calcutta, and afterwards of the Court of Directors.

Charge of corrupt motive in the appointment of Munny Begum.

And, my Lords, having fully gone through that part of the case, I next come to that part of the Charge which imputes to Mr. Hastings a corrupt motive for the appointment, and which if the Charge could establish, no doubt Mr. Hastings must be deemed by your Lordships highly criminal, however proper the appointment might be in itself. My Lords, in the few observations with which I troubled your Lordships upon this part of the case, I had endeavoured to establish these points:—first, that the sum in question was not denied by Mr. Hastings to have been taken by him, but that the only question arose with respect to the legality

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of the receipt of that sum; Mr. Hastings, on the one hand, contending that it was an allowance in conformity to an established custom, paid to him as Governor General during the three months that he resided at Moorshedabad; the honourable Managers, under the authority of the Charge, insisting, on the other, that it was not a sum paid upon any such account, but expressly given and taken as a bribe for the appointment of this person. Therefore, the question for your Lordships to try, upon this part of the case, will be, whether the Charge be well founded in this respect—namely, that Mr. Hastings received the sum of a lac and a half of rupees, as a bribe or consideration for the appointment of the Munny Begum; or whether he received it on the ground, as he states, as an allowance, in conformity to an established custom.

Methods of sustaining a charge of bribery:

My Lords, there are but two methods by which this charge of bribery can be established. The first is by direct and positive evidence; consisting either in the admission of Mr. Hastings himself, or in the declaration of other persons, under circumstances which make these declarations admissible evidence. The other is by circumstantial proof; that is, that, combining all the circumstances of the case, in want of positive proof, your Lordships must necessarily be induced to form that conclusion.

By direct evidence.

My Lords, with respect to the first—direct and positive proof—that is not pretended on the part of the honourable Managers themselves. For they have not attempted to refer your Lordships to any one document, nor have they produced any witness, to establish that, in any one moment, either Mr. Hastings or the Begum—the one who paid, and the other who received this sum—admitted it to have been paid and received as a sum given for her appointment. With respect, therefore, to all positive evidence, the case stands entirely clear of that; and, on the contrary, I shall be able to show your Lordships that, so far from either of the parties having said that which even in point of construction might amount to such an admission, they have uniformly and consistently maintained the reverse. The way, therefore, in which the honourable Managers attempt to establish this part of their case is, by offering to the consideration of your Lordships a great number of circumstances which, in their combination, according to them, lead necessarily to this conclusion—that the money was taken, in the manner the Charge imputes it to have been, as a bribe for this appointment.

By circumstantial evidence.

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The honourable Managers begin this part of their case with giving in evidence some circumstances that preceded the account transmitted by Mr. Goring from Moorshedabad, upon which I shall have occasion presently fully to observe; and, in respect of these circumstances, they go to the length of imputing to Mr. Hastings a settled, deliberate, premeditated, plan of corruption, formed in his own mind at the moment that he left Calcutta, for the purpose of carrying into execution the orders of the court of Directors.

Four circumstances adduced in evidence.

My Lords, there are four circumstances on which the honourable Managers chiefly rely, as facts which, according to them, establish the pre-existing purpose of corruption; each of which I shall separately and shortly examine in its turn. The first circumstance which the honourable Managers have pointed out to the consideration of your Lordships will be found in the printed Evidence, page 983; and in which the honourable Managers state that they will show the premeditated corruption of Mr. Hastings in the whole of the transaction in question. And, for this purpose, they produce an order, given by the court of Directors, to have a strict account kept by a proper officer of all the expense in the Nawab's family—that such account shall be transmitted to them; and Mr. Hastings' acknowledgment that he kept no such account. And, from the mere circumstance of that account not having been kept, the honourable Managers urge your Lordships to go to the length of this conclusion—that the not keeping that account originated in the mind of Mr. Hastings in a premeditated plan of corruption!

Omission by Mr. Hastings to furnish the required account of the Nawab's expenses.

It undoubtedly is true that, in the year 1771, when, by their letter of the 28th of August, the court of Directors ordered the reduction of the Nawab's salary, they did direct that an account should be kept of his expenses, and annually transmitted to the Board. It is equally true that, upon the 1st of June, 1775, on the motion of General Clavering that such an account might be produced, Mr. Hastings acknowledged that no such account had been transmitted, and admitted it to be an omission on the part of the late Government. The question then is, whether or not, in fair construction, this omission to furnish such an account supplies your Lordships with that sort of evidence which the honourable Managers allege grows out of it?

Pretended motive for not demanding the account.

The only ground upon which it can be imputed to Mr. Hastings that the account was kept back with his privity and knowledge, or that he had any purpose with respect to

himself to answer by it, must be this:—that, if the account had been produced in the manner the court of Directors ordered it to be done, it would have furnished evidence against him of the receipt of this lac and a half of rupees; and, therefore, merely for the purpose of keeping back that evidence from the public, Mr. Hastings omitted to call for this account in the manner that he was directed to do. The foundation of this supposition, therefore, is, that Mr. Hastings was a corrupt man—one who, in violation of all the duties of his office, had been guilty of bribery in this specific instance. 16 May 1793

His facilities for falsifying the account.

I need hardly suggest that, in the case of a person of such a description, at that moment Governor General of Bengal, having all the persons up at Moorshedabad, according to the Charge itself, completely and devotedly at his own interest, nothing could have been more easy than for a person of such a description either to have had the entry of this sum omitted in the accounts altogether, or, if it was necessary to give some appropriation of that lac and a half, to enter it under another head. And I, therefore, leave it to your Lordships, in point of fair inference, to say—whether it is possible to suppose that the mere circumstance of this account not having been transmitted furnishes any such conclusion.

The order to furnish it addressed generally to the Board.

But, my Lords, there is another circumstance which is material to be attended to. Mr. Hastings is supposed purposely to have kept back this account, because the production of it would have criminated himself. But the order was not directed to Mr. Hastings alone, but to him in common with every other member of the Board. It, therefore, supposes that Mr. Hastings possessed even the spirit of prophecy upon this occasion—that he could have looked into the minds of others, and that he could have seen that no one, individually, any more than himself, would have done that which the orders of the court of Directors required him to do! It seems to me that the fair inference which results from this transaction is directly the other way—namely, that Mr. Hastings had no consciousness of guilt whatever upon this occasion; because, undoubtedly, if he had, men under such circumstances are apt to do rather too much than too little, and, instead of leaving the account in that state, he would, undoubtedly, have taken measures to prevent the receipt of a bribe by himself to have appeared upon the face of the account. Therefore, so far from the circumstance making in favour of the honourable Manager, it makes directly against him!

16 MAY 1793. The fabrication of false accounts.

The next evidence is in the printed Minutes, page 984, in which the honourable Managers again distinctly state that they will produce several false accounts made up by Mr. Hastings, to show that his conduct in the foregoing transaction was with a view to peculation and bribes; and the false account to which the honourable Managers allude, and which by their evidence they attempt to establish is this:—they have given in proof a letter from Mr. Hastings to the court of Directors, dated the 25th of March, 1775. In that letter, Mr. Hastings informs the court that, in conformity to their orders in 1773, he had caused the Nawab's allowance to be reduced, as they had directed, from the sum of thirty-two lacs to sixteen lacs, annually; and the falsehood is said to consist in this—that Mr. Hastings had not made any such reduction at the time.

Letter of Mr. Hastings announcing the reduction of the Nawab's allowance.

My Lords, to controvert this assertion, it seems only necessary to refer your Lordships to the evidence given by the honourable Managers themselves. The date of the letter in which this is communicated to the court of Directors is the 25th of March, 1775; and your Lordships will find, in page 984 of the printed Evidence, a letter from Mr. Hastings to the Nawab, dated the 18th of July, 1772, in which he expresses himself thus:—

Letter of Mr. Hastings to the Nawab. insisting on the reduction.

"In compliance with the desire of the Council, I take the liberty of writing to your Excellency on a subject which immediately concerns your own welfare and the order and economy of your domestic affairs. They observe with great concern that, notwithstanding the notification from the Board to your Excellency by the letter of Mr. Cartier, so long ago as the month of July last, of the reduction of your revenue to sixteen lacs, your establishment and current expenses still continue on the footing of your former allowance. They think it, therefore, their duty to remind your Excellency of this reduction, which, as it proceeds from the positive order of the Company, admits neither of recal or mitigation."

On the 18th of July, 1772, Mr. Hastings had, therefore, by a letter to the Nawab, ordered that to be done which, upon the 25th of March, 1775—nearly three years after—he writes to the court of Directors as having been done by their order.

Alleged evasion of the order.

The honourable Managers have, undoubtedly, given evidence to prove that, notwithstanding this order of Mr. Hastings, no such reduction took place. To this I could only answer, that, if the fact were so, still it is impossible to make Mr. Hastings responsible for every neglect which takes place, in every part of the extensive executive Government

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at the head of which he was placed. It was his duty to issue to others the orders of the court of Directors. It was the duty of the Resident to carry these orders into effect. I have proved that, as far as depended upon Mr. Hastings, such orders were given to the Resident. However, the question arises, whether or not, in point of fact, this reduction did actually take place. And the evidence which the honourable Managers have given upon this subject seems to me of a very extraordinary nature.

Mr. Hastings refuses to pass the accounts of Mr. Crofts.

Your Lordships will find that, in page 985, there is an account produced, which purports to be an account between the Nawab of Bengal and the East India Company. My Lords, the account is signed by Mr. Crofts; and, when it is brought forward, Mr. Hastings states that, in the accounts signed by Mr. Crofts, there is credit given to the Nawab for his stipend according to the old establishment; whereas it was expressly settled by the Committee of Circuit, in July or August, 1772, at the time that the Governor was with the committee at Moorshedabad, that the reduced stipend was to take place from the time the Nawab received the notification; and that he, Mr. Hastings, thinks his mistake ought to be corrected before his accounts are finally settled with the Nawab.

He insists on the orde being carried out.

Mr. Hastings, then, acting here in conformity with the opinion which he entertained upon the subject and the assurance he had given to the court of Directors, the instant an account appears signed by the proper officer, giving credit to the Nawab according to the old establishment—Mr. Hastings is himself the person to bring that error to the consideration of the Board, and desires that it may be corrected. So that here you are to impute a conduct of this sort to Mr. Hastings—that he, in confederacy with Mr. Crofts, determined to commit an error in the accounts, merely for the sake of exposing Mr. Crofts and himself!

Revision of the accounts.

These accounts were, upon the motion of Mr. Hastings, for the express purpose of rectifying the mistake, once again submitted to the consideration of the proper officer. And your Lordships will find, in the course of the same page, that two other accounts are produced by Mr. Johnson, the deputy accountant-general to the revenue department;—these accounts will be found in page 987 of the Minutes;—and the fact now in dispute between the honourable Managers and myself is this—whether, during the whole of the year 1772, the Nawab was paid according to the new or to the

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Evidence of the reduction having been made.

old establishment. The account which is produced in the second instance and signed by Mr. Johnson, upon an accurate inspection of it by your Lordships, will, as I conceive, prove the fact to be directly the reverse of what is stated on the part of the prosecution, and will establish this beyond all doubt—that, so far from the Nawab having been paid according to the old establishment, he was paid according to the new; and that, therefore, the order of Mr. Hastings was strictly carried into execution, and all that he asserted upon the subject was consistent with the purest truth. It is only necessary to refer your Lordships to the first entry in that account, which purports to be of the 1st of January, 1772, page 987—the account which the houourable Manager has himself produced in evidence—and the entry is—

"Paid the Nabob, by arrears due to him upon the old establishment, up to this date."

So that here your Lordships see that, in the very beginning of the year 1772, on the 1st of January, there was a settlement with the Nawab according to the old establishment.

Now, I should be glad to know why a settlement took place with the Nawab according to the old establishment, upon the 1st of January, 1772, unless that were to follow which it is incumbent upon me to establish, namely, that, from the 1st of January, 1772, and during the whole course of that year, the Nawab was paid, not according to the old, but according to the new establishment. The next entry in the account ascertains that fact; for, on the 8th of September, the account states a payment of this sort:—

"By stipend, agreeable to the new establishment, from January the 22d to this date, making 7 months and 17 days."

This entry, from January to September, proves the allowance to the Nawab to have been paid according to the new establishment, and not according to the old, which is the fact stated on the part of the prosecution. And if your Lordships refer to the remaining part of the account, which will be found in the Appendix, page 110, and which hereafter I shall give in evidence, the account is again taken up on the 9th of September, is continued down to the end of the year, and, from the comparison of both these accounts, it will appear in evidence that the Nawab was not paid according to the old establishment, but according to the new. Therefore the account made up by Mr. Crofts was founded in error, and that error was rectified on the motion of Mr. Hastings.

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However, the honourable Managers go much further in their imputations with regard to Mr. Hastings; for not content with insinuating, in this instance, that the making up the account, in the manner that I have stated, was a contrivance between him and Mr. Crofts, your Lordships will find that, in page 990, they gave evidence of this sort—to show that Mr. Crofts was placed in the department of accountant-general by Mr. Hastings himself. So that your Lordships perceive the tendency of this evidence is to connect Mr. Hastings and Mr. Crofts, by representing them as linked in a conspiracy together for the purpose of defrauding the Company, in the instance in question; and the proof of the conspiracy—which the honourable Managers think so essential as to have made [it] the subject of evidence through many pages, and of observations in their speeches during a considerable length of time—the first proof we have of that conspiracy is, to show that Mr. Crofts was placed in the department of accountant-general by—whom?—by Mr. Hastings himself! The word *himself* is added to show that it was peculiarly and appropriately the act of Mr. Hastings, as distinguished from the other members of the Council. They then pursue subsequent appointments of Mr. Crofts through different consultations. Each of these I will shortly examine, and I pledge myself to show that, in every one instance, the fact is represented directly contrary to the truth.

Pretended conspiracy of Mr. Hastings and Mr. Crofts.

The appointment of Mr. Crofts imputed to Mr. Hastings.

My Lords, in page 990, will be found the first evidence upon this subject;—and your Lordships will recollect that the proposition which the honourable Manager has pledged himself to prove is, that Mr. Crofts was placed in the office of accountant-general by Mr. Hastings himself. My Lords, what is the evidence of that? A consultation, dated Fort William, the 29th of August, 1773, present William Aldersey, Esq., President; Thos. Lane, James Harris, Henry Goodwin;—Mr. Barwell indisposed. At this consultation, the extract of proceedings of the Committee of Circuit at Cossimbazar is read; which extract is in these words:—

Mr. Crofts appointed by the Board.

"That it be recommended to the Board to confer this office on Mr. Charles Crofts, the present accountant of the Board of Revenue, whose diligence and practice in that business, and the particular instructions of the honourable Court of Directors, justly entitle him to that important charge."

Then follows another extract, being the resolution of the

16 May 1793. Board, signed by Mr. Barwell, Mr. Aldersey, Mr. Lane and Mr. Harris, in which they concur with the Committee of Circuit; and Mr. Crofts is accordingly appointed.

Absence of Mr. Hastings at the time.

Your Lordships, therefore, perceive, in a case where the honourable Manager asserts the appointment to have been the act of Mr. Hastings himself—emphatically "Mr. Hastings himself"—the name of Mr. Hastings does not even appear as having been present upon either of these occasions! The appointment, in the first instance, is a recommendation by the Committee of Circuit to the Board, where it does not appear Mr. Hastings was present. The adoption of that recommendation is the act of the Board, at which Mr. Hastings could not be present, because he was at that time at Cossimbazar. What, therefore, becomes of the assertion of the honourable Managers that this appointment of Mr. Crofts was the act of Mr. Hastings, when the name of Mr. Hastings does not even appear to any one consultation when the subject came before the Board? Though it does not appear, I am not disposed to deny that it is extremely probable that Mr. Hastings, in the first instance, was present with the committee when they determined to recommend to the Board the nomination of Mr. Crofts. Be it so. Here again, I ask, how it appears to have been peculiarly the act of this gentleman, as distinguished from all other persons—from which the only inference can be that these persons would have objected to it if within their power—when I show that, so far from having been the act of Mr. Hastings alone, it was, in the two instances specified, the unanimous act of every member who then composed the administration? I leave, therefore, your Lordships to judge as to the veracity of this first assertion, as far as the evidence supports me.

Unanimity of the Board.

Pursuing this subject, the honourable Managers next state, that they will prove the peculiar degree of favour and confidence in which Mr. Crofts stood with Mr. Hastings at this time, and that he, Mr. Hastings, again conferred upon him another lucrative office. The evidence to support this assertion will be found in page 991 of the printed Minutes; and it consists in a consultation, at which there appear to have been nine other persons present besides Mr. Hastings. So that the appointment of Mr. Hastings, in this instance again, was the unanimous act of the Board; and, unless the honourable Managers can state that the individual Mr. Hastings is made up of nine other persons together with himself, I should be glad to know upon what ground the assertion

stands, that this is the appointment of Mr. Hastings, as distinguished from the rest of the Government. 16 MAY 1793.

Increase of Mr. Crofts' salary imputed to Mr. Hastings.

There is more evidence in the same page upon this subject; and your Lordships will find that the honourable Managers next state—

"To prove that, immediately after the death of Colonel Monson, when Mr. Hastings had a much greater degree of influence in the Council, he proceeded to give a further salary to Mr. Croftes, in addition to what he had given him before, and carried that resolution that he should draw for that salary for two years back, with interest on that part of it which had not been paid him."

These words are peculiarly deserving your Lordships' notice; because they represent Mr. Hastings as having waited for the death of Colonel Monson, when, in the language of the honourable Manager, he acquired a peculiar degree of influence in the Council, beyond what he otherwise possessed, for the purpose of carrying into execution an appointment which, if Colonel Monson had been living, could not have passed; that is, that, in conjunction with General Clavering and Mr. Francis, they would have formed the majority, and consequently that no such appointment would have taken place. That is the charge distinctly made by the honourable Manager against Mr. Hastings, and in respect of which fact, thus asserted, he desires your Lordships to go the extent of inferring a pre-existing purpose of corruption in the mind of Mr. Hastings, before the appointment of this woman.

Here, again,—what is the evidence? And I beg your Lordships' particular attention to every part of this circumstance, as peculiarly deserving of it. The consultation which the honourable Manager has given in evidence is the 6th of December, 1776. Your Lordships will find that, at that consultation, there were only present Mr. Hastings and Mr. Barwell — Lieutenant-General Clavering indisposed, Mr. Francis indisposed. The consultation, with respect to the subject of Mr. Crofts, begins in this way—

The increase moved by Mr. Barwell.

"Mr. Barwell.—'I move that the office of accountant-general be put on the same footing as the superintendent of the Kalsa records; and that Mr. Croftes be allowed to draw henceforward the same salary and house rent as is drawn by the superintendent of the Kalsa.'

"Governor-General.—'I agree.'"

So that here, again, the evidence that is to show that Mr. Crofts is in a peculiar degree of confidence and favour by this appointment, is a motion for his appointment, not made by Mr. Hastings, but by Mr. Barwell, and only

16 May 1793. assented to by him. But, my Lords, as the evidence stands, undoubtedly it appears that, for some purpose or other, Mr. Barwell was extremely anxious that this increase of salary should take place; for, without assigning any reason whatever for making the motion, he merely begins with moving that Mr. Crofts may draw for the arrears; and all that appears is, that to that motion Mr. Hastings agrees.

The first thing that I would beg of your Lordships is, to examine this subject, as it appears upon the face of the evidence, in page 991; and that your Lordships will then turn to the Appendix, page 495, where the whole of this subject will very distinctly appear. I have already had occasion to mention to your Lordships that this appointment took place at a Board at which there were only present Mr. Hastings and Mr. Barwell. In the case of the appointment of the Begum, when the question was put whether or not she should be appointed, the extract given in evidence by the honourable Managers begins with these words—"On these grounds we are of opinion that the appointment should take place"—and, in that instance, the honourable Managers omitted all those grounds in which particularly consisted the reasons of, and the justification for, the act. But in this instance, at least, I have no such complaint to make; for, on referring to that which I shall hereafter give in evidence, which is in the Appendix, page 497, your Lordships will find this—that Mr. Barwell states—"upon these grounds I move:"—so that, in this instance, the words "upon these grounds," which are the introduction to the sentence, are actually left out. It begins with the words "I move," as if that were the commencement of the paragraph; so that there is nothing to direct your Lordships' attention to what were the reasons. It is not, like the former, merely an omission of the grounds themselves, but it is a direct falsification of the paragraph in question; because the motion made by Mr. Barwell begins in these terms—"upon these grounds I move"—whereas the extract given by the honourable Managers, cutting out the three introductory words of the sentence, "upon these grounds," makes it begin with—"I move that the office held by Mr. Crofts may be put upon a certain footing." This will appear, upon comparing the extract given by the honourable Managers with the whole of the paper which I shall hereafter produce, and which I quote at present from the Appendix, merely to refer your Lordships to it.

Falsification of evidence by the Managers.

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Again, what were these grounds? When the right honourable gentleman institutes a charge against Mr. Hastings, that he appointed Mr. Crofts to an office for which he was so peculiarly unfit that he was obliged to wait till the death of Colonel Monson had taken place, if your Lordships turn to the Appendix you will find distinctly stated all these grounds on which, on the part of Mr. Barwell, this motion in favour of Mr. Crofts was made; and by going through those grounds you will find that they occupy whole pages, consisting of the warmest commendation, bestowed from time to time by the Committee of Council—the warmest commendations bestowed from time to time by the Committee of Revenue, and by the court of Directors—upon this very person whom the honourable Manager represents as so peculiarly unfit for the office that, in respect of that appointment, he imputes guilt to Mr. Hastings! Why then the words "on these grounds" were omitted, I think nobody can be very much at a loss to conjecture; when, by referring to the Appendix, the grounds themselves will be seen.

Suppression of grounds of Mr. Barwell's motion.

Again, let us consider what is the assertion as made by the right honourable Manager;—that, immediately upon the death of Colonel Monson, when Mr. Hastings had acquired a greater degree of influence in Council, this motion was brought forward. Is not that distinctly asserting that both General Clavering and Mr. Francis must have opposed this motion, and that they, jointly with Colonel Monson, if living, would have constituted that majority which would make it impossible for the motion to be carried? With respect to this fact, your Lordships will find that the only evidence given, in which the name of General Clavering and Mr. Francis occurs, is in page 992 of the printed Evidence, and from which it appears that they informed the court of Directors, upon the 10th of January, of this appointment having taken place, and of this increase in the salary of Mr. Crofts. What then had been done between the 5th of December, 1776, and the 1st of January, when this letter was written to the court of Directors? Of that the right honourable Manager has not thought fit to produce any evidence whatever.

Assumed opposition of Col. Monson, Gen. Clavering and Mr. Francis.

My Lords, that defect I undertake to supply; and I will show your Lordships, in direct and flat contradiction to every part of this assertion, that this was a motion carried merely by the death of Colonel Monson—that, so far from that being the

Acquiescence of Mr. Francis.

16 May 1793. case, with Mr. Barwell and Mr. Hastings, Mr. Francis assented to the appointment of Mr. Crofts; and, therefore, if Colonel Monson had been living, there would have been no difference whatever, because Mr. Hastings, Mr. Barwell and Mr. Francis, would have been the majority, and, if General Clavering and Colonel Monson had opposed, they would have been in a minority upon the occasion. What then becomes of the inference which the honourable Manager has distinctly drawn from the assertion in this instance, that this was an appointment carried merely by the death of Colonel Monson, when I pledge myself to show your Lordships, by producing the consultation of the 10th of December, four days only after—which the honourable Manager might and must have had under his contemplation if he inquired for it—that, so far from Mr. Francis having opposed his appointment, he together with Mr. Hastings acquiesced in it?

I hope, then, the right honourable gentleman will admit this to me;—that, if the mere appointment of Mr. Crofts to this office is to prove a peculiar degree of confidence and favour with respect to the person who appoints, it proves it equally with respect to Mr. Francis as to Mr. Hastings; which operates to a conclusion a little further than the gentleman would wish—that is, to fix corruption upon the one as well as upon the other. This is not all. The only person who opposed the increase of Mr. Crofts' salary was General Clavering. His minute of the 10th of December, 1776, I will hereafter give in evidence; and from that minute it will appear that this Mr. Crofts, who is represented as so peculiarly unworthy of the office which he held—a person of so much demerit that all his acts furnished evidence of a conspiracy between him and Mr. Hastings—when the question arose whether or not his salary should be increased, General Clavering opposed it upon this ground—that it would be inconsistent with his principles upon a former occasion, in an instance of the same sort, with respect to another person; but that, as to Mr. Crofts—this man of demerit according to the honourable Manager—he was a person of whom he expresses himself in the warmest terms of praise and commendation, and he actually laments the necessity that he is under of being obliged to dissent from the motion of Mr. Hastings.

Qualified dissent of Gen. Clavering.

Now then, I ask again, what becomes of the assertion that all these motions were the result of contrivance between Mr. Hastings and Mr. Barwell, which contrivance they waited

to carry into execution till the death of Colonel Monson, in the manner they have mentioned, when I show your Lordships that the appointment was the act of the majority; Mr. Francis concurring with Mr. Hastings and Mr. Barwell, and General Clavering lamenting, in this particular instance, as far as the merit of the individual was concerned, that he was obliged to dissent from them? 16 MAY 1793.

With this observation I quit, therefore, the subject of Mr. Crofts. And there is but one other circumstance upon which it will be necessary to trouble your Lordships with a few observations, before I come to the evidence that was transmitted from Moorshedabad. Your Lordships will find that, in page 993 of the printed Evidence, the Managers r the Commons informed the House that they should next proceed to the proof of the receipt of three lacs and a half of rupees by Mr. Hastings, stated in this Article, and for that purpose should produce the charges made by Nundcomar before the Council, and the evidence adduced by him in support of those charges; introductory to which they would lay before the House some evidence to prove the situation Nundcomar previously held, the manner in which he had been employed by Mr. Hastings by the order of the court of Directors, and Mr. Hastings' inconsistent conduct towards him.

Inconsistent conduct towards Nundcomar imputed to Mr. Hastings.

The inconsistence of Mr. Hastings' conduct towards Nundcomar is distinctly explained in page 997 of the Evidence, in which your Lordships will find that, after having given evidence to show the employment of Nundcomar by Mr. Hastings in various instances, the honourable Managers wound it up with proof to this effect;—that Mr. Hastings, for the first time, began to attack the character of Nundcomar, when he apprehended that Nundcomar was about to make a charge against himself; and from this attack—for the first time, according to them, on the character of Nundcomar—they infer a consciousness of guilt in the mind of Mr. Hastings, consisting in the receipt of this bribe of a lac and a half of rupees, which led him by anticipation to obviate the effect of that evidence which Nundcomar might afterwards give.

My Lords, before I enter upon any observations with respect to this very distinguished character, that I may in no respect whatever do him the least degree of injustice, I will take the liberty to read, in the words of the honourable Manager, the description which he thought fit to give of him in his opening speech, and in which, speaking of Nundcomar, he expresses himself in these words:—"This man

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The description of Nundcomar according to the Manager.

was, undoubtedly, by Mr. Hastings himself, in the records of the Company, declared to be one of the first men of that country, and every thing that a subject could be. He was a person illustrious for his birth, sacred with respect to his caste, opulent in fortune, eminent in situation, who had filled the very first offices in that country. But he was, added to that, a man of acknowledged talents and superiority, and made the whole people of Bengal appear inferior; and a man whose presence always infused awe and respect. This is the man—who was near 70 years of age, a title which, without any other, generally brings some respect with it—this is the man whom Mr. Hastings despises, and will not suffer him to be qualified as his accuser!"*

My Lords, sure I am, that there is no one person who can have heard this very elegant description of the character in question, but must have felt those sentiments excited which the presence of the original is always said to have inspired—awe and respect. A person illustrious for his birth—splendid in point of rank—sacred in point of caste—who, having passed through the highest offices of the state, at length had attained that which, according to the right honourable Manager, always gives a claim to respect—an extreme old age! I trust, however, the honourable gentleman means to confine it to the case of a virtuous and benevolent old age, such as it ought to be—an old age made up of calm sensations and contented desires. When a man about to depart, like a guest well satisfied, looks round on all with complacency and love, and wishes to others even more happiness than he may have himself enjoyed, such an old age gives indeed a title of respect. But an old age of an opposite description—one made up of all the busy cares and base agitations, the jarring passions and conflicting crimes, of an eager, ardent, feverish and guilty, youth, still working in rank and scalding fermentation, like so many poisoned ingredients in a burning caldron—such an old age gives to no man a claim to respect, but, on the contrary, exhibits all that human nature can present most odious and most afflicting.

Limitation of the claim of age to respect.

My Lords, what has been the youth of this man, what his old age, which gives him this title to respect, and which respect your Lordships are desired to entertain for him for the purpose of giving effect to this testimony against Mr.

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* See the speech of Mr. Burke, in opening the Sixth Charge; vol. ii. p. 46. The quotation is from a different report of the speech.

Hastings, I shall more distinctly point out to your Lordships' consideration when I draw it to more unexceptionable evidence than the speech of the right honourable Manager—that is, the testimony which now stands upon your Lordships' Minutes. 16 May 1793.

My Lords, the subject with respect to this man begins in page 996, and the inconsistency of Mr. Hastings' treatment of him is alleged to be this. I have already stated to your Lordships that, in the orders given in the court of Directors on the 26th August, 1775, Mr. Hastings was directed to employ the Raja Nundcomar for the purpose of detecting the supposed malpractices of the administration of Mohammed Reza Khan, but that he was not to put him in any situation of power or of trust. My Lords, that letter was secret and confidential with respect to Mr. Hastings, and I have already proved that he had the express order of the court of Directors to communicate to the other members of the Council no other part of it than such as might be necessary to carry these orders into execution. Your Lordships will find, in order to prove that, in the opinion of Mr. Hastings, before Nundcomar had accused him he was a person fit to be employed, the honourable Managers, in page 996, give in evidence a minute of the dissent of Messrs. Dacrees, Lawrell and Graham, to the appointment of his son Raja Goordass; and the effect of that minute is, that they object to the appointment of Goordass, because they esteem it, in effect, the appointment of Nundcomar. And, upon referring to the page in which this evidence occurs, your Lordships will find that here again the evidence would have stopped on the part of the honourable Managers, but for our interposition. And though, in the very same paragraph, it is stated "we prayed the patience of the committee to pursue the testimonies on which we object to this appointment," yet these two concluding lines are left out of the extract, that the attention might not be drawn to those grounds upon which the [appointment] is objected to, and introduced at our desire merely. What appear, then, the grounds as they distinctly appear here?—and, when I have stated these, I leave your Lordships to judge of the fidelity of the representation made by the right honourable Manager with respect to this person, whose appearance, whose character, whose demeanour in youth and age, uniformly throughout life and on every occasion, had been such as to attract awe and to command respect!

Confidential nature of the communication to Mr. Hastings from the Directors, on the subject of Nundcomar.

Use made by the Managers of the refusal of the Board to appoint Raja Goordass.

Suppression of the grounds of the objection.

My Lords, the extract with respect to the conduct and

16 May 1793. character of Nundcomar, which appears upon your Lordships' Minutes, consists in what?—Evidence fabricated by Mr. Hastings? No! for I scorn to hold up to your view, in contrast with the painting exhibited by the right honourable Manager, any sketch of the character of this man as drawn by the gentleman at your bar. But the evidence to which I beg your attention consists in a letter from the court of Directors to the President and Council, dated the 22nd of February, 1764, a period not less than ten years before the time when Mr. Hastings is supposed to have attacked the character of Nundcomar, in order to obviate that evidence which he conceived he could hold against him.

Character of Nundcomar according to the Directors.

What then, in the year 1764, appears to have been the true character of Nundcomar, as represented by all those persons who are conversant with it, and as echoed back from Europe to India in a letter of the court of Directors? My Lords, I will read the words of it,—

"From the whole of your proceedings with respect to Nundcomar, there seems to be no doubt of his endeavouring, by forgery and false accusations, to ruin Ram Churn; that he has been guilty of carrying on correspondence with the country powers hurtful to the Company's interests, and instrumental in conveying letters between the Shazada and the French Governor General of Pondicherry. In short, it appears that he is of that wicked and turbulent disposition that no harmony can subsist in any society where he has an opportunity of interfering."

This man who, according to the honourable gentleman, was the pattern of every virtue, the pride and excellence of human nature—who never moved without inspiring awe and respect—who is [thus] painted in the course of a criminal accusation in the year 1792—in the year 1764 has every vice imputed to him of which human nature is capable, and is represented as the scourge and curse of the society in which he lives! Now, comparing together the speech of the honourable Manager with the evidence upon your Lordships' Minutes, I leave you to choose between the two, and to judge of the fidelity with which the character of this man has been represented, merely for the purpose of making him a witness against Mr. Hastings, and of giving an effect to his testimony which it would not otherwise have acquired. Again I leave your Lordships to judge whether it was, as the honourable Manager states, extremely unreasonable that Mr. Hastings should object to this man as not qualified to be his accuser in 1775, who, in the year 1764, stood convicted of forgery and false accusation.

Right of Mr. Hastings to object to the testimony of Nundcomar.

I trust, therefore, that, as far as we have hitherto gone, at least, none of these circumstances put together with such

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nice contrivance and curious skill upon the part of the honourable Managers warrant, in the slightest degree, even if the facts were true, the inferences they have drawn from them; but that I have shown your Lordships that, comparing the evidence with the facts, in every instance the facts do not exist. It only remains, upon this part of the case, to examine the inconsistence of the conduct imputed to Mr. Hastings; and in respect of which the honourable Managers hope your Lordships will impute it to consciousness of guilt, in the mind of the gentleman at your bar, which led him to make the attack which is afterwards given in evidence.

The document to which I have now taken the liberty to draw the attention of the Court is an extract from the general letter of the court of Directors, given in evidence by Messrs. Dacrees, Laurell and Graham, who objected to the appointment of this man as unworthy, for the reasons that I have stated. Now, what is it that upon this evidence the honourable gentleman does?—And mark the treatment which in this instance at your Lordships' bar Mr. Hastings has received. I have already stated that the order of the court of Directors for the appointment of this man to investigate the conduct of Mohammed Reza Khan was confidential and secret in its nature. Mr. Hastings was not at liberty to disclose it. His lips were locked upon the subject. When, therefore, these reasons were brought forward, and properly brought forward by those who did not know the orders he had received, he was obliged to hold a language foreign to his heart, because he could not speak all that passed there, compelled as he was to secresy by the orders of the court of Directors. Mr. Hastings, therefore, in a minute of the 28th of July, 1772, in answer to the former, enters into some palliation of the character of Nundcomar. And would your Lordships believe it possible that, though in a letter he afterwards informs the court of Directors, which I will hereafter give in proof—a letter of the 10th of September—that, though his conduct may appear inconsistent to others, yet the only ground of the inconsistency is their orders, he not being at liberty to explain why he employed Nundcomar, this artificial language, made use of because secresy was imposed, the honourable Manager has represented as if it contained the genuine sentiments of Mr. Hastings; and thence he has inferred that, in the year 1772, in his opinion, he was a person fit to be employed! Surely, my

Compulsory palliation of the conduct of Nundcomar.

16 MAY 1793. Lords, this is placing Mr. Hastings in a situation that is somewhat hard! When the court of Directors order the employment of this man—when that order is secret—when, because he is not at liberty to disclose the true reason, he is obliged to suggest any that occurs to him—ought the honourable Manager afterwards to convert such a sentiment into the genuine sentiment of his mind, and to represent it as if it was the real opinion Mr. Hastings entertained, merely for the purpose of fastening crimination upon him?

Early reflections on Nundcomar's character by Mr. Hastings.

Again, in what does this inconsistency in the conduct of Mr. Hastings consist? Your Lordships will find that the letter in question is dated the 20th of July, 1772. It is in pages 996-7. The Managers pledge themselves to show that Mr. Hastings first began to attack the character of Nundcomar when he apprehended that Nundcomar would make a charge against him; and, to show what the first attack upon the character of Nundcomar was, they give in evidence a letter dated the 24th of March, 1774. On the opposite side of the page, in a letter dated the 28th of July, 1772, Mr. Hastings distinctly states that he cannot undertake to vindicate the moral character of Nundcomar; that he was privy to all those facts which the majority state in their minute—the charge of forgery and false accusation; and yet the honourable Managers, in the very opposite page, have distinctly asserted, in direct contradiction to all the evidence upon the former, that the first attack upon the character of Nundcomar was made in 1774, when it appears to have been made by Mr. Hastings in 1772, then recognising all the proceedings which, in the year 1764, had represented this man as totally unworthy of all confidence! With these observations I, therefore, leave this part of the case, as far as it results from the observation of the honourable Managers, or as far as it resolves itself into any probability of guilt from the conduct of Mr. Hastings with respect to this person.

Now, having gone through all the introductory circumstances which are relied upon by the honourable Managers, previous to the evidence that occurs as furnished by Mr. Goring, I come to the consultation of the 25th of May, 1775, which will be found in page 1031 of the printed Minutes. I should state to your Lordships that, before this time—that is, upon the 10th of May, in the year 1775—on a motion of General Clavering, Mr. Goring had been appointed to proceed to Moorshedabad; and his orders were, on his

Mr. Goring's mission to Moorshedabad.

arrival there, to divest the Begum of all authority, power and influence, whatever, and to seize her papers and put them under his seal. My Lords, I will show your Lordships that this order Mr. Goring faithfully obeyed. Immediately on his arrival, he did remove the Begum from her office. He divested her of all influence. He seized her papers; and one of the first acts of this gentleman at Moorshedabad was to transmit to the majority of the Council the document which I am now about to read. In the consultation of the 25th of May, 1775, your Lordships will find this paper recorded— 16 MAY 1793.

He removes the Begum from the office and seizes her papers.

"Enclosed I send you an account of several sums given by the Begum. It is under her seal, and was delivered to me by the Nabob in her apartments. Signed—Charles Goring."

The account in question is intitled thus—

The memorandum of disbursements.

"Memorandum of disbursements by English gentlemen from the Nabob's sircar, in the Bengal year 1179.—To the Governor, Mr. Hastings, for an entertainment—To Mr. Middleton, on account of an agreement entered into by Baboo Begum—in each instance, 150,000 rupees, making three lacks."

The first fact, therefore, that occurs, by way of observation upon the evidence furnished by Mr. Goring, appears to be this;—that, in the very first moment, when he received from the Begum an account of this sum paid to Mr. Hastings, it consisted in a paper which expressly stated it to be an account of entertainments, and distinguished between that payment and another to Mr. Middleton; the payment to Mr. Middleton being distinguished from the former, and, while the one is entered under the words—"On account of an entertainment to Mr. Hastings," the other is—"On account of an agreement entered into by the Baboo Begum."

As far, therefore, as this evidence goes, there is no doubt whatever that it establishes the fact of the payment being on account of entertainment, because it is so expressly entered upon the account itself. And I should be glad, further, to know upon what possible ground it could be the object of this person to distinguish between the case of Mr. Hastings and Mr. Middleton, and, in the one instance, to refer it to the usual allowance under the existing custom, and, in the other, to state it to be an agreement entered into with the elder Begum, unless the facts were so? On this paper, therefore, I rely, as the first that occurs in order of time, and which distinctly states the ground upon which this payment was made to Mr. Hastings—not as a gift or bribe for

16 MAY 1793. her appointment, but as that which I maintain it to be, in conformity to this and to all the evidence—an allowance for entertainment according to the usual custom.

Nature of the payment to Mr. Hastings.

My Lords, it appears, in page 1032, that this paper, material as it undoubtedly is, because your Lordships perceive it is the first evidence of any sort that has occurred with respect to the payment of any money to Mr. Hastings—this paper, in the course of the same consultation, which is that of the 25th of May, 1775, is taken into consideration. It appeared a little extraordinary to Mr. Hastings that Mr. Goring, who was sent up to Moorshedabad for the general purpose of regulating the government there, instead of transmitting to the Board any general intelligence with respect to the objects of his mission, should employ himself merely, in the first days of his arrival, with transmitting a single scrap of paper containing two entries only of sums of money given to Mr. Hastings and Mr. Middleton. Mr. Hastings, therefore, desires, in the consultation of the 25th of May, 1775, that Mr. Goring may be desired to inform the Board on what account this partial selection was made by him. That is, why, having at this moment the possession of all the accounts of the Begum, [from] those accounts he had selected these two instances only of payments made to those persons, and why this partial selection was made. Mr. Hastings further desires that an explanation may be given by the Begum of the sum laid to his charge, and that the Nawab or the Begum may be asked by Mr. Goring their reasons for delivering this separate account.

Mr. Hastings demands an investigation of the transaction.

So that here, your Lordships perceive, Mr. Hastings, who then had no influence whatever over this person, who was in the care and under the custody of Mr. Goring, so far from shrinking from investigation, is the very person who desires the question may be explicitly put to her—on what account this money was paid. Mr. Francis and Mr. Barwell had no objection to Mr. Hastings' motion. Colonel Monson states, that he thinks Mr. Goring should acquaint the Board if the Begum gave any explanation of the account, and what passed between her and him when the Nawab gave it. As to the intention of the Nawab or Begum in communicating the account, it is impossible Mr. Goring can be acquainted with it; he thinks it, therefore, unnecessary to apply to him further on that head:—"And it appears to me"—what?—"that the account is already explained!" Why, then, in the construction of Colonel Monson, no further explanation

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was necessary. What explanation had been given? That it was a payment on account of entertainment. Contented, therefore, with that explanation—namely, that it was a payment on account of entertainment—giving faith and credence to that in every respect, Colonel Monson, expressly upon that ground, that it is already sufficiently explained, objects to any further inquiry.

An explanation demanded of the Begum, at the instance of Mr. Hastings.

Your Lordships will find that in a minute of General Clavering. He also states, that the word ziafat, which is the Persian word in the original account, signifies entertainment. But in the result, Mr. Hastings being extremely desirous to procure that explanation, with which all the other members of the Board were satisfied at the time, it was agreed that Mr. Goring should be directed to require from the Begum the explanation Mr. Hastings asks; that he should report the whole explanation, and require in particular an explanation of the payment stated to be made to the Governor General. In conformity with these orders of the Board, your Lordships will find an explanation was afterwards given; which explanation occurs in the course of the consultation on the 8th of June, 1775, and which will be found in page 1033 of the printed Minutes. The first document which occurs is a letter from Mr. Goring to the Governor General and Council, in which he states that, with respect to the manner in which he got possession of the paper, it arose thus:—that, when he desired to be informed by the Begum how the balance arose, she mentioned the sum of a lac and a half to the Governor, to feast him while he staid there, and a lac and a half to Mr. Middleton, by the hands of the Baboo Begum. Here, again, expressly distinguishing between the two payments, to Mr. Hastings and to Mr. Middleton. In this letter is also an inclosure, a paper addressed by the Munny Begum to General Clavering. Here, then, are two additional documents before the Board; the one consisting in the evidence of Mr. Goring, who gives an account of a conversation between the Begum and him at the time of the delivery of the account, and which conversation expressly proves the payment to have been on account of entertainment. The second document is a paper under the seal of the Begum, inclosed in a letter and addressed to General Clavering, in which the same entry again occurs; that is, a sum of a lac and a half paid for entertainment for the Governor, Mr. Hastings.

Mr. Goring's conversation with the Begum.

Upon this, when these two papers occur for the consider-

16 MAY 1793. ation of the Board, your Lordships will find, in page 1034, that Mr. Hastings in particular desires this question to be put:—

Questions desired by Mr. Hastings to be put to the Begum.

"On what account was the sum of a lack and a half given to the Governor General which you have laid to his account; was it in consequence of any requisition from him, or of any previous agreement, or of any established usage?"

These are the questions which Mr. Hastings desires may be specifically put to the Begum, in order to draw from her an explanation of the whole of this subject. My Lords, Mr. Francis agrees, provided Mr. Goring may be present. Mr. Barwell has no objection. And I now come to that which seems to me to be extremely material, because it throws the strongest light possible upon the whole of this case—I mean, evidence brought forward by the honourable Manager himself, consisting of a minute delivered in by Colonel Monson. And here, at least, I may be permitted to say, that we shall not hear from the honourable gentleman his usual subject of complaint—that he is obliged to call his witnesses from the enemy's camp. In this instance, at least, he is within friendly lines; no drum that beats but his spirit must be in unison with it; no flag that flies but what he must joyfully hail! From this favourable, friendly and protecting, camp, in the person of Colonel Monson, he brings forward no obscure subaltern, no inglorious partisan, but a man, on every account whatever, with respect to knowledge and character—I have no difficulty to say it—intitled to all the consideration that your Lordships can give. What, then, upon this subject is the evidence of Colonel Monson? But before I state to you that evidence thus brought forward by the honourable Manager, I will take the liberty once more distinctly to present to you the question for your Lordships' consideration.

Definition of the question.

My Lords, the honourable Managers insist that this sum was a bribe taken by Mr. Hastings for the appointment of the Begum; to be referred merely to that appointment, and not to be explained by any existing usage under which every Governor General of Bengal was intitled to a certain allowance of 2,000 rupees a day. On the other hand, I state this:—that there is an established usage for persons of distinguished rank, when resident at the courts of eastern princes, to have an allowance made them for their table expenses. That is the question.

My Lords, with respect to that question, you will see

the evidence of Colonel Monson, in the very moment when, upon other grounds—grounds widely different from those taken by the honourable Manager—he thinks fit to impute impropriety to Mr. Hastings with respect to his conduct in this transaction. The words of Colonel Monson's minute are these:— 16 May 1793.

Minute of Col. Monson.

> "The first question, in my opinion, has been already answered. The second is of little consequence, because it signifies nothing to know in what manner this transaction has been made known. With respect to the third question, we already know on what account the lack and a half was given."

Do you already know it? From what source do you derive your knowledge? From the representation of Mr. Goring;—from the paper of the Begum. In what do these representations consist? In every instance, of the assertion of the fact that it was a payment on account of entertainment, which excludes the idea of a bribe. And, adopting that explanation, here again Colonel Monson distinctly states:—

> "We know on what account the money was given; we know, therefore, that this money was given on account of entertainment."

But Colonel Monson goes further, for he distinctly states this:—

> "I have heard that it has been"—what?—"an established usage for persons of distinguished rank, when resident at the court of eastern princes, to have large sums of money given them for their table expenses."

Here, then, is the direct evidence of Colonel Monson, asserting a fact within his own knowledge, as established by the reputation of the country, that it is an established usage—that is all I am contending for—for persons of distinguished rank to have a certain allowance for their table expenses, when resident at the courts of eastern princes. Colonel Monson, therefore, is the witness whom I call in confirmation of the story told by the Begum and the explanation given by Mr. Hastings, to ascertain beyond all doubt the existence of this established usage.

Question of usage.

The only question, then, that occurs is—does it apply to the case of Mr. Hastings? Was he a person of distinguished rank? Was he resident at the court of an eastern prince? Because, if he was, according to the usage Colonel Monson admits to exist, then, undoubtedly, he would receive, in conformity with that usage, an allowance for his table expenses. My Lords, he was at this instant, as your Lordships know, the Governor General of Bengal. He was at

16 MAY 1793. this time, as your Lordships also know, resident at the court of this eastern prince. And, therefore, he was, according to the evidence of Colonel Monson, a person on whom, in every respect whatever this usage undoubtedly attached.

Colonel Monson entertains, therefore, no doubt whatever with respect to the existence of the usage; but, on the contrary, I will undertake to show, from the subsequent part of Colonel Monson's evidence, that he entertained as little doubt that this money was actually paid to Mr. Hastings in conformity with this usage, as he did of the existence of the usage itself; and that it never occurred to Mr. Francis, General Clavering or Colonel Monson—persons who were upon the spot at the time, and had all the means of information—it never occurred to them to impute the receipt of this sum as a bribe on the part of Mr. Hastings, but that they uniformly admitted it to be a sum of money taken on account of entertainment; though in some other respect they thought it to be improper. The words on which I rely as proving this admission on the part of Colonel Monson are those which immediately follow, where your Lordships will find he states:—

Opinions of Mr. Francis, Gen. Clavering, and Col. Monson.

"The Governor General can himself satisfy the court of Directors whether he received such an allowance from the Begum or Nawab's household, or whether he has charged any sum to the Company on account of his expenses while at Muxadavad."

Therefore, your Lordships see, being completely satisfied of the existence of the usage, Colonel Monson thinks it unnecessary to put any question whatever with regard to that, but the only points on which he desires to be satisfied are these:—first, whether Mr. Hastings did receive a sum in consequence of that usage; and, secondly, whether, if he did, he made any charges whatever to the Company. So that the impropriety of the conduct of Mr. Hastings—if any—in the opinion of Colonel Monson, would have consisted in this; — that, supposing he received this money from the Begum as an allowance for his expenses while at Moorshedabad, he should have charged those expenses to the Company.

Now, for the sake of argument, I might admit what is in direct contradiction to the fact—I might agree with the honourable Manager. I might concede to Colonel Monson that Mr. Hastings, though he received 2,000 rupees a day as an allowance for entertainment, did at the same time charge his expenses to the Company while at Moorshedabad.

16 MAY 1793.

Admitting that, what would it prove? It would prove impropriety in the conduct of Mr. Hastings, no doubt, in having charged these expenses to the Company; but the mere circumstance of having charged the expenses to the Company cannot alter the nature of the payment on the part of the Nawab, and convert that thing to a bribe which was an allowance on account of entertainment. It, therefore, clearly appears that, even if the fact were that Mr. Hastings had charged his table expenses while at Moorshedabad, still it would not in the slightest degree assist the honourable Managers in maintaining their charge—that is, that this was taken as a bribe and not on account of entertainment. But in this instance, also, there will be no difficulty whatever in satisfying your Lordships; for, on referring to the Evidence, your Lordships will find that an account of travelling charges is given in evidence, in page 1048, which consists in two articles; the first being merely general, under the entry of durbar charges—

Accounts of Mr. Hastings' travelling charges to Moorshedabad.

"Paid the Governor's travelling charges, six months, 14,335 rupees."

To which entry your Lordships will observe that there is no name, there is no date, there are no particulars. The second entry is of the 2d of December, 1772, from the durbar account, where your Lordships will also find another entry of travelling charges, for six months—from April to September, being 17,014 rupees; which your Lordships will perceive, from the mere inspection of the account, could not be fresh charges, because six months could not have occurred from November to December, and the whole is stated to be a payment for six months, from April to December, including the whole period when Mr. Hastings came to the chair. The total of these, consisting even of those two sums, if put together, would not amount to 30,000 rupees; whereas the mere charges of the Committee of Circuit, after Mr. Hastings left them, amounted to upwards of one lac of rupees, as appears from the face of the same account.

I, therefore, state—and the evidence will prove it clearly to your Lordships—that, with respect to these sums which consist of travelling charges, they were not the expenses of Mr. Hastings while at Moorshedabad, which he never did charge to the Company, but they are expressly described upon the face of the account, in a way that excludes the idea of their being charges while at Moorshedabad, as his travelling charges to and from Moorshedabad. Therefore,

His expenses at Moorshedabad not charged to the Company.

16 MAY 1793. the idea of Colonel Monson would have been completely satisfied by the production of this evidence, because it appears Mr. Hastings never did charge that which he received from the Nawab to the Company; and if so, Colonel Monson is the person on whose evidence I rely—first, to prove the existence of the custom; next, that even in the consideration of the Government at the time it was considered as a usage, and not as a present or a bribe. There would have been nothing criminal in the conduct of Mr. Hastings, provided he had received only this allowance from the Begum.

The questions put to the Begum.

Upon the discussion which took place on the 8th of June, 1775, it was determined that the three questions which were proposed by Mr. Hastings should be sent up to the Begum; that they should be put to her by Mr. Goring, Mr. Anderson and Mr. Maxwell; and that her answer to these questions, which the honourable Managers have given in evidence, should be transmitted to the Board. And your Lordships will find these answers, which compose the last document on which it will be necessary to observe, on this subject, entered on the consultation of the 24th of July, 1775, when a paper is transmitted addressed to the Governor General and Council, being the execution of the commission which was granted to the three persons whose names I have mentioned.

The Begum's reply.

The paper is in these words:—

"Mr. Goring inquired of me concerning the arrears due to the sepoys and bahlah, observing that the nizamut and bahlah money was received from the Company,—from whence then could the balance arise? I made answer that the sum was not adequate to the expences. Mr. Goring then asked, what are those expences which exceed the sum received from the Company? I replied, all the particulars will be found in the papers. The affair of the three lacks of rupees on account of entertainment for the Governor and Mr. Middleton has been, I am told, related to you by Rajah Goordass; besides which there are many other expences which will appear from the papers, as the custom of entertainment is of long standing; and accordingly every Governor of Calcutta who came to Moorshedabad received a daily sum of 2,000 rupees for entertainment, which was, in fact, instead of provisions."

Now, my Lords, what then becomes of the case made on the part of the prosecution, which consists in the allegation of this payment being a bribe, when it is distinctly proved, by the answer to the very questions put by those who in other respects were the accusers of Mr. Hastings, first, that the custom of entertainment was of long standing; and, secondly, that every Governor who went to Moorshedabad from Calcutta had, in effect, on account of table expenses,

received that very sum of 2,000 rupees a day which was paid to Mr. Hastings? 16 MAY

This makes a complete end of the question on the part of the prosecution; for what is the result of this evidence? It consists entirely in the testimony of two persons, the Begum and Mr. Hastings himself. Nothing can be more clear than this, that if you take the account given by the Begum to fix upon Mr. Hastings the receipt of money, you must take the explanation given by the Begum with respect to the account on which that payment was made. She cannot be a witness to one purpose and not to the other. She cannot be supposed to speak truth and falsehood in the same instant, and yet be deserving of credit. If, therefore, she is a sufficient witness to prove the fact of the payment, she is an equal witness to prove that fact which is within her own knowledge, namely, the cause of payment; and she asserts uniformly the cause to have been, not a bribe, but a sum paid for entertainment. With respect, therefore, to the evidence of the Begum, there can be no doubt whatever. Effect of the evidence of the Begum

Who, then, is the other witness? Mr. Hastings himself. And here again precisely the same rule applies. You must take his evidence throughout or you must reject it altogether. If you establish the fact of the receipt by him, you must take the explanation; and the explanation by him precisely agrees with that given by the Begum. Therefore, whether you put it upon her evidence or upon his; whether you put hers out of the question and retain his, or put his out of the question and retain hers;—I care not in which way it may be;—by either mode I get to precisely the same result, namely, that the sum taken was not a bribe, but an allowance for table expenses.

I might rest the case safely here, independent of all intrinsic evidence whatever of the account given of this. But it does not depend merely upon the account of Mr. Hastings or the Begum, because, in the most essential particulars, namely, the existence of this usage, both these persons are expressly confirmed by Colonel Monson himself, who proves it in as strong a manner even as the Begum does. I then ask your Lordships what is to be put in the opposite scale and against all this weight of proof? On what ground is it that the honourable Managers can call upon your Lordships at this instant to say that a payment, innocent in itself, illegal in no respect whatever, because taken in conformity Confirmatory evidence of Col. Monson.

16 MAY 1793. with an established usage—Mr. Hastings doing only that which has been done by all who preceded him—is to change its nature and be converted into a crime to be fixed upon Mr. Hastings—a crime in respect of having taken a bribe for the appointment of this person? It seems to me that there is one way of stating this, which is altogether conclusive upon the subject.

Recapitulation.

The first question for your Lordships' consideration will be:—do you believe, after all the evidence that you have heard, that, in point of fact—I care not for the moment whether legal or not—there existed a usage to allow to every Governor of Calcutta 2,000 rupees a day for his table expenses? All the evidence proves that, and there is none on the other side. The fact, therefore, is established. Do you believe that Mr. Hastings was Governor General of Bengal and at Moorshedabad? About that there can be no doubt. He was, then, a person upon whom the usage was to attach. Whether, therefore he had appointed the Begum or any other person, or whether no appointment had ever taken place, he must equally have received the sum of 2,000 rupees a day, the moment you admit to me the existence of the usage; because the receipt of the sum did not depend upon the appointment, but upon his being a person of distinguished rank, resident during a certain time at the court of an eastern prince.

I, therefore, once for all, beg to know, as the concluding observation upon this subject, upon what ground it is possible now to contend that, being intitled to this under the existing usage, and all the evidence produced by the honourable Managers themselves proving it to be a payment in conformity with it, your Lordships can be desired to fix upon Mr. Hastings that which this Charge imputes—namely, that it is not a sum taken in conformity with an established usage, but a gift or bribe for the appointment of this woman? So it stands, upon the evidence produced by the honourable Managers themselves. But, in order to leave this part of the case without the possibility of a doubt, I pledge myself hereafter to produce evidence of this sort:—I will give in proof two accounts, the one of the year 1768, and the other of the year 1770, both which accounts will show that, during the period of a month in the first instance, and of thirteen days in the second,—the first occuring in the government of Mr. Verelst, the second of Mr. Cartier—precisely, except with the difference of a thousand rupees, one and

Similar allowances to the Nawab, at Calcutta.

the same thing happened at Calcutta as happened at Moorshedabad with respect to Mr. Hastings; that is, there was a payment of a thousand rupees a day made to the Nawab by the Company, expressly as his allowance for his table expenses. This happened in 1768, and in the year 1770, in the instance of the Nawab at Calcutta, in the government of Mr. Verelst and Mr. Cartier, when Mr. Hastings was not even in India. My Lords, this evidence, therefore, in addition to the former, though undoubtedly the case does not stand in need of it, will leave no doubt whatever in your Lordships' minds, on what account this money was taken. 16 May 1793.

Lapse of time prior to the Charge.

My Lords, hitherto I have gone through the whole of this subject as if the facts were altogether recent, and without drawing your Lordships' attention, in any respect whatever, to the extraordinary circumstances under which this accusation comes forward. But, my Lords, turning to the right honourable Managers, I beg to be informed, on what ground it is that, in the year 1793, Mr. Hastings is called upon to explain his conduct with respect to a transaction that happened in the year 1772? I beg to know why, during the whole of this time, slept those watchmen upon their stands; why, during the whole of this time, was the gentleman now at your bar, not only not accused, but highly trusted and highly honoured—placed in the porch—given the care and custody even of the gates of the citadel—called upon to watch and guard over the interests of those who are now accusing him? Oh! but, perhaps, it may be said, that though this happened in the year 1772, and the Charge was only preferred in the year 1786—that is, fifteen years after—it was but recently discovered; it had been concealed during the whole of that time, and the moment it first came to light, that instant the Charge was preferred. My Lords, not so! From the year 1773 down to the year 1779, Mr. Hastings continued in the high situation of Governor General of Bengal. During the whole of that time, every particular which is now upon your Lordships' Minutes was as distinctly known as it is now: and there is not at this instant a single syllable of proof on the part of the prosecution in addition to all that which existed when it was first known, in the year 1775! My Lords, under these circumstances I ask, is it reasonable—is it just—is it humane—that, after Mr. Hastings has been suffered to continue in India, after three successive appointments of the Legislature—the

16 May 1793. last in the year 1780—for no less a period than ten years—even before the expiration of that time, on his return to Europe, without any intelligence whatever transmitted to him in India that he was intended to be accused, the moment he arrives here, after having wasted the best of his years in your service, his years of health and strength, while difficulties encompassed and dangers threatened your possessions—when at length he returns to enjoy a few years of peace and comfort—is it consistent with justice—is it consistent with humanity—that the gratitude of the nation should show itself in instituting a prosecution with respect to a transaction that happened fifteen years before, every particular of which was distinctly known at the time of those successive re-appointments? However, it has been thought fit to institute this Charge. I trust that, upon the part of Mr. Hastings, notwithstanding the length of time, I have now as to every particular given it a complete, solid and satisfactory, answer.

Division of the Charge relating to transactions subsequent to the Act of 1773.

My Lords, I have now gone through the first period of time in which any inquiry is necessary into the conduct of Mr. Hastings—I mean that which preceded the Act of Parliament in the year 1773. But, my Lords, hitherto, if I may be allowed the expression, according to the honourable Manager, we have only been wandering by the starlight of circumstances; but now the morning steals upon the night, melting the darkness; day at length appears, and we get to what the honourable Manager emphatically calls "the period of discovery!" Discovery!—by whom? By Mr. Hastings himself! For I undertake to show that, with respect to every remaining transaction of the Charge, there is not at this instant a single particle of evidence upon your Lordships' table but what the hand of Mr. Hastings has deposited there. And, my Lords, before I come to the period in question, it will be necessary for me to enter into some consideration of that which separates me from it—I mean the Act of Parliament which passed in 1773.

Nature of the Charge.

I had originally the honour to state to your Lordships that the conduct of Mr. Hastings is, by the Charge, alleged to be criminal in two several and distinct respects. The first is, that the receipt of these several sums was in every instance a breach of an Act of Parliament which prohibited the receipt of a gift or present by the Company's servants, on any ground or under any pretence whatever. The

16 May 1793

The receipt of presents allowable previously to the restrictive Act.

second is, that these were not merely gifts or presents taken for the use of the Company, but for his own use and benefit. And, in respect to this part of the subject, I beg the honourable Managers will understand me distinctly. The question now to be considered is, the true sense and meaning of the Act of Parliament which, according to the honourable Manager, prohibits the receipt of presents, and in respect of which receipt, as a breach of that Act of Parliament, they contend Mr. Hastings has done that in every instance which they charge to be illegal. This reduces it to the mere fact of a receipt taken for his own use and benefit; because, undoubtedly, if the honourable Managers can couple it with any circumstance which changes it from a present into a bribe, then it stands upon a ground distinct and different from the Act—namely, the ground of corruption in general, which vitiates every act whatever. But it will not be denied to me, that, before the Act of the year 1773, it was no offence whatever, under certain circumstances, to take a gift or present if freely offered and received upon an honourable consideration, whether the gift were taken for yourself or for the Company. There is no general law which, applying to India more than to Europe, prohibited, before that period, the receipt of a present, as far as a present imports a sum voluntarily given. The prohibition, therefore, must arise out of the Act of Parliament; and, before I come to the Act, it will be necessary shortly to draw your Lordships' attention to these circumstances which in point of time preceded it.

Method for determining the true meaning of the Act.

My Lords, the circumstances to which I allude are, in the first place, a letter that was written by Lord Clive to the court of Directors, in the year 1765. And, in the construction of every law, where the terms of it in any respect are doubtful, there are three things to be considered. First, the old law; secondly, the mischief; and thirdly, the remedy. Let us, therefore, inquire, in order to expound the terms of this Act, if it be in any respect doubtful what was the evil which prevailed before that Act, and which the Act was intended to cure. Therefore, in order to ascertain whether or not the receipt of presents for the use and benefit of the Company is prohibited by the Act of the 13th George III., it will be necessary for your Lordships to do this:—in the first place, to advert to the practice which existed before the covenants that were proposed by the court of

16 MAY 1793. Directors and executed by their servants, in order to restrain the practice. In the second place, to advert to the language of these covenants, and to the 13th of George III., which is the Act in question, as afterwards explained by another Act which passed in the 24th George III. And from all these taken together your Lordships will have to decide, whether or not, in point of fact, the receipt of a present by every servant of the Company, not for his own use and benefit, but for the use and benefit of the Company, is a breach of this Act of Parliament.

Corrupt practices prior to the covenants introduced by Lord Clive.

With respect to the practice, I have already distinctly pointed out to your Lordships that it consisted in the corrupt conduct of the servants of the Company, who had taken what, in effect, were bribes, but disguised under the name of presents, for their own use and benefit. In order to restrain this practice—that is, taking by individuals for their own use and benefit, as distinguished from taking for the use and benefit of the Company—Lord Clive, in 1765, proposed that an oath should be taken and a penalty bond be executed by all the future servants of the Company. The words of the oath are extremely material. They occur in page 957 of the Evidence. And your Lordships will find that the meaning of the oath is distinctly explained in these words. The oath, after stating that—

> "I do solemnly swear that I will not take any gift or present to my own interest"—contains these words—"The full intent and meaning of this oath being that, in consideration of the sum"—and so on—"no other emolument or advantage whatsoever shall in any wise howsoever, directly or indirectly, arise or accrue unto me, my heirs, executors or administrators."

The object of the covenants to restrain servants of the Company from applying presents to their own use.

The covenant, therefore, which Lord Clive proposed to be executed by every future servant of the Company is expressly restrained to the case where the benefit is to arise to the party himself, and not to the Company. And the covenant is to restrain him from enjoying that benefit. The words of this covenant, as proposed by Lord Clive, were afterwards adopted by the Company, and form the substance of all those covenants which were executed by their servants successively, from the date in question, that is, in the year 1765, down to the time when the Act of Parliament passed.

Now, my Lords, I state this—that nothing can be more

clear than that the covenants, at least, were not meant to apply to the instance of money taken for the use of the Company, because they are directly, in words, restrained to the instance of a gift taken by the party for his own use and benefit. If, therefore, the Act was only meant to enforce the covenant, and the covenant was only meant to apply to the case of money taken by the party for himself, it must necessarily follow that the Act cannot be more extensive than the covenant; and, therefore, if the covenant does not prohibit a taking for the Company, neither can the Act of Parliament. But it does not rest here; because I will now take the liberty to point out the clause in the Act of Parliament;—and I undertake to say that, when you have heard the words of it correctly stated, no doubt whatever can possibly remain in your minds that the sense and meaning of this Act is restrained merely to a gift or present taken by the servants of the Company for their own use and benefit, and cannot, by any construction whatever, be extended to the case of a present taken for the use of the Company. 16 May 1793

Similar object of the Act of Parliament.

There are but two ways in which a prohibition can be introduced into an Act of Parliament. The one is by express words: the other is by necessary implication. Where the words are express we are not driven to implication; and where the language is clear we cannot imply any other meaning than the words themselves import. What, then, are the words in the clause in question, as they occur in the Act of the 13th George III., cap. 63.? The construction of this Act will depend upon the two clauses. The two sections upon which the questions will arise will be the 23rd and 24th. The words of the 23rd section are these:—

> "And be it further enacted by the authority aforesaid, that no Governor General or any of the Council of the said United Company's Presidency of Fort William in Bengal, or any Chief Justice, or any of the Judges of the Supreme Court of Judicature at Fort William aforesaid, shall, directly or indirectly, by themselves or by any other person or persons, for his or for their use, or on his or their behalf, accept, receive, or take, of or from any person or persons, in any manner or on any account whatsoever, any present, gift"—

Limitation clause.

Now, my Lords, attend only to the words of the Act of Parliament, and see in what manner the honourable Managers have thought fit to frame this Charge, and if, from the framing of the Charge, I do not completely satisfy your Lordships that, even upon the true construction of the Act

16 May 1793. of Parliament, it is utterly impossible, on the ground furnished by the honourable Manager himself, to maintain that it supports the allegation in the Charge which imputes criminality in respect to the mere illegality of the receipt, I deceive myself much.

The Charge, in the fifth paragraph, states this :—

Terms of the Charge.

"That the British Legislature did, by an Act of the 13th year of the reign of his present Majesty, strictly prohibit the receiving presents by the servants of the India Company, on any pretence or account whatsoever."

Now, I distinctly concede to the honourable Manager that, if he has correctly recited the words of the Act—if he has not omitted in the recital all those words which make the whole difference in the argument—undoubtedly this Act of Parliament does prohibit, even in the instance of presents taken for the use of the Company, the receipt of them. But, my Lords, mark what it is that upon the face of these Charges the honourable Managers have done. The question is this:—Whether a party may not, consistently with the Act of Parliament, receive presents for the use and benefit of the Company, provided they are not for his own use and benefit? That depends upon the words of the Act. The words of the Act of Parliament are express and positive—namely, that no person shall receive a present for his own use and benefit. The words "for his own use and benefit" are omitted upon the face of this Charge, and the whole is rested upon the words "that he shall not receive it on any account or pretence whatsoever." So that, your Lordships perceive, these words which, in respect of their generality, undoubtedly would extend to the case in question, and prohibit the receipt of presents even for the use of the Company, are explained in the Act by the particular words, and restrained to the case of a taking by a servant for his own use. The words "for his own use and benefit" are left out of the Charge, where it professes to state the Act of Parliament, as it is put merely upon the ground "on any pretence whatsoever."

Misapplication of the Act.

Now, will the honourable Manager maintain that, in point of fact, that is a correct recital of the act? It is not: because, it is only necessary to compare the clause of the Act with the Article of impeachment, to see that the very words "for his own use and benefit" which stand in the one are omitted in the other. Will he maintain that, in

point of construction, this is the true meaning of the Act; for upon that ground I will meet him when the question arises? Whether or not the receipt of a gift or present is illegal or legal is to be determined by the words of the Act, if it points out the specific case in which the prohibition consists. What are the words?— 16 May 1793.

"That no person shall, by himself or by any other person or persons, for his or their use, or on his or their behalf"—

My Lords, here then is an Act of Parliament which contains a specific prohibition, defining and ascertaining the precise sense of presents which every person is prohibited to receive—ascertained by these words "for his own use and benefit." If the Act of Parliament were, as the honourable Managers state, an Act which extended universally to all presents, I shall be glad to know why the words which restrain it to the particular case, "for his own use and benefit," are introduced; except that it is to show that, in every other case, by necessary implication, because not prohibited, a gift or present may undoubtedly be taken.

The receipt of money for the use of the Company not contrary to the Act.

The first question, therefore, that I beg distinctly to state to your Lordships' consideration, and that I call upon the honourable Managers to answer, if they possibly can, hereafter, will be this:—Whether a present taken by a party for the use and benefit of the Company comes within the meaning, or within the words, of this Act of Parliament?—and I will give them their choice; they shall discuss it upon either ground.

In the first place, I state it does not come within the meaning of the Act, because the general purpose of the Act was to correct the evil which existed, which was a taking by the servants of the Company for their own advantage.

In the next place, I state that, so far from falling within the words of the Act, it is directly excluded by it; because the Act describes a particular present which the party may not take by the words "for his own use and benefit;" and therefore, that a present which was not taken by Mr. Hastings for his own use and benefit, but for the use and benefit of the Company—I state it with all the confidence of succeeding in an argument which an accurate investigation of the subject enables me to feel—cannot, with respect to its general meaning or precise words, be said to be a breach in any measure whatever of the prohibition which it contains.

16 May 1793.

Therefore, inasmuch as it rests upon the 13th George III., the first Act prohibiting the receipt of presents, I maintain this—that the only presents prohibited are presents taken by the party for his own use and benefit. If, therefore, I can show that, in every instance whatever, beyond the possibility of doubt, each of these presents which are the subject of Charge was not taken by Mr. Hastings for his own use and benefit, but for that of the Company, I call upon the honourable Manager to point out—in express contradiction to the specific proposition of this Charge—what words there are to be found in any part of the Act which restrained the taking a gift or present, not for the party himself, but the party himself in the moment of taking it appropriating it to the use of the Company.

Perversion of the meaning of the Act by the Managers.

Undoubtedly, therefore, nothing can be more clear than that the Charge totally perverts the sense and meaning of the Act of Parliament by the omission of those emphatic and essential words which restrain and qualify its meaning; and I apprehend that the fair sense and meaning of the Act undoubtedly is this—that no Governor General—which is the case of Mr. Hastings—shall, on any account or in any manner whatsoever, take, directly or indirectly, by any other person or persons, for his or their use, or on his or their behalf, accept, receive or take, of or from any person or persons, in any manner or on any account whatsoever, any present. But the words in which the honourable Managers make the prohibition consist, that is, "on any account or pretence whatsoever," refer to the ultimate appropriation and not to the cause of taking, and completely change the meaning of the Act by leaving out the words which precede —namely, "for his own use and benefit;" for when the Act says "no person shall take for his own use and benefit, on any account or pretence whatsoever," it is impossible to contend that the words "on any account whatsoever" are more extensive than "for his own use and benefit." Upon that I rest the construction of the Act; because the words of the Act are "you shall not take upon any pretence for your own benefit,"—that is, nothing shall warrant the taking, provided it appears to be a taking for yourself. Therefore, it appears to me that, with respect to the cause of Mr. Hastings, as to the illegality of the receipt of these different sums, as a breach of the Act, distinct from the corruption imputed to it, I might safely rest it upon the 13th George III., and call

Refutation of the Charge in respect of the breach of the Act.

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upon your Lordships, in confidence that the answer would be favourable to me, to say that neither the sense nor words of this Act prohibit, in point of law, that which Mr. Hastings has done—that is, the receipt of presents, not for his own use and benefit, but the use and benefit of the Company. But, my Lords, if any assistance were necessary to this part of the argument, I think I derive it in a very essential degree from another Act which passed some years after, and to which it is now necessary to draw your Lordships' attention.

Further proof afforded by a subsequent Act.

Before I come to that Act of Parliament, I will take the liberty distinctly to state in what the difference, in point of construction, exists between the honourable Manager and myself. I contend that, inasmuch as the 13th George III. does not contain the words "or for the use and benefit of the Company," therefore such a gift and present when taken is not prohibited. Let us see, then, what are the words which occur in the 24th George III. And here it is unnecessary to state to your Lordships that the law must be one of two things: it must either be declaratory or it must be enacting. And your Lordships know perfectly well that, in the case of a former law, where doubts have arisen with respect to the meaning of it, but yet your Lordships, upon considering the words in which it is framed, can with safety to your own conscience declare it to have a particular meaning, there the doubts are explained in the shape of a declaratory law, which, in effect, interprets what is the meaning that belongs to the former. But undoubtedly a declaratory law cannot pass, where you are to give by your declaration a meaning to a former law different from what it possessed; and, therefore, where a former law will not be the subject of a declaration in that way, it is always necessary that a new law should be enacted to remedy the defect of the former. Thus far, therefore, we get—that, after the question had been again and again before the House of Commons upon the construction of the Act of 13th George III., in the 24th George III. another Act passed which expressly refers to the former. We must, therefore, take these two laws together; we must see what the meaning of the first is as it arises out of the latter; and that meaning must particularly depend upon the latter, if, in any respect whatever, it is inconsistent with the former.

Nature of declaratory laws.

Now I will submit this—that doubts had arisen with respect to the meaning of the 13th George III., namely,

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Doubts as to the meaning of the 13th of George III.

whether it did or did not prohibit the taking of a gift or present for the use of the Company;—and I think that is putting the argument most strongly against myself;—I will suppose that doubts had arisen with respect to the construction of it. Those doubts would have been reasonable or they would have been absurd. If they had been reasonable doubts, your Lordships, in your legislative capacity, would have adopted them, and would have passed a second law to declare the meaning of the former. On the other hand, if they had been absurd doubts, your Lordships would have rejected them, and, instead of passing an enacting law to remedy the defects of the former, you would not have passed even a declaratory law, because the meaning of the former would have been sufficient without any additional declaration. I go this length—suppose I could find upon the face of the 24th George III., as referring to the 13th, that it is a declaratory law, fixing and ascertaining the meaning of the former, and declaring that meaning to be, that a servant of the Company may not receive a present for the Company; even in such a case I would go the length of maintaining that no criminal charge whatever could be maintained upon the ground of such an Act; because, where a man could only contend against the law in respect of its intelligibility, if it is so doubtful as to require a further exposition, it would be absurd that your Lordships, in your legislative capacity, should declare at one end of the Hall that the law is so doubtful that it could not be understood, but that by passing through the Court of Requests and coming down to this Hall, that which was doubtful in your legislative capacity was clear in your judicial capacity, and that there is a breach on the part of Mr. Hastings of that Act amounting to a crime.

The 24th of George III., a declaratory Act.

Charge not to be founded on a doubtful law.

I maintain that, if this Act of the 24th George III. were merely declaratory of the 13th George III., and even if it declared it to be that which the honourable Manager contends, yet, inasmuch as doubts only could be the foundation for a declaratory law—and your Lordships would then be adopting those doubts as reasonable—an indictment could not be founded upon a former law which is declared by a subsequent law to be so doubtful as to make it necessary to have a subsequent legislative exposition of it. It must be distinctly admitted that, if a law is so clear that it does not even stand in need of a subsequent explanation by Parliament, in the shape of a declaratory law—if in precise

and intelligible language it prohibits the receipt of presents for the use of the Company—it would be absurd to suppose that, with such a law in force, the Legislature should pass a second law, merely to prohibit what the former had expressly before forbidden. 16 MAY 1793.

The 24th of George III. an enacting law.

The first essential question, therefore, that arises for your Lordships' consideration will be this:—the 24th George III. is not a declaratory but an enacting law; from which I conclude—and let the honourable Manager overturn the inference if he can—that, being an enacting and not a declaratory law, that which it forbids had not been forbidden by any former law, else it would not be necessary to pass a second to do what a first had done already. Hence I may safely conclude that all I find in express words forbidden, for the first time, by the 24th George III. was not prohibited by the 13th George III. Suffer me, then, after these introductory observations, to draw your Lordships' attention to the particular clause. The first clause of the 24th George III. on which I mean to trouble your Lordships with any observations is the 45th; and it is in these words:—

What it forbids is not forbidden in the former law.

Clause prohibiting the receipt of gifts for the use of the Company.

"And be it further enacted, that the demanding or receiving of any sum of money or other valuable thing as a gift or present, or under colour thereof, whether it be for the use of the party receiving the same, or for, or pretended to be for, the use of the said Company or of any other person whomsoever, by any British subject holding or exercising any office or employment under His Majesty or the said united Company in the East Indies"—

And it then makes it illegal. So your Lordships see here the prohibition in the 24th George III. in express words extends to the case of presents taken for the use of the Company, which words, "for the use of the Company" are not to be found in the Act of the 13th George III.; and, not being there, created the necessity of passing the Act of the 24th George III., merely to supply that defect. Now I beg to know, if the 13th George III. by necessary implication forbade the receipt of presents for the use of the Company, whence arose the necessity of passing a new law in the 24th George III., containing a prohibition applying to that specific case? And do I argue fallaciously or unfairly when I say that, when I find an Act passing in the 24th George III. containing the words for "the use of the Company," in addition to those which stood upon the face of the former law, it could be only upon the ground that the former law did not reach the particular case?

16 MAY 1793. And, if so, I beg to know what becomes of the argument, as it applies to the instance before the Court, which in every case [refers to] presents taken by Mr. Hastings for the Company, and not for himself? But, my Lords, it does not stop even here; for your Lordships will find that, in the next section, the 47th, this is enacted:—

Penal clauses of the former law repealed.

"That so much of the aforesaid Act of 13th year of the King's reign as subjects any person receiving gifts or presents to any penalty or forfeiture for so doing, or as directs that such gifts, presents, penalties, or forfeitures shall belong to the said Company, shall be repealed."

So that your Lordships see the very clause in question by this Act repealed, as to all prosecutions not instituted before a certain time, and it is re-enacted with these additional words, the want of which in the former Act created the necessity of the latter; and the moment the necessity is admitted to exist the argument is conclusive in favour of the construction which I support, namely, that the former Act did not prohibit the receipt of presents for the use and benefit of the Company. Therefore, on these grounds, without repeating the observations that I have troubled your Lordships with upon the construction of these Acts of Parliament, it seems to me that nothing can be more plain and clear [than] that, when you take it upon the construction of 13th Geoorge III., it is sufficiently clear and obvious in itself, confining the prohibition to the receipt of a present by a party for his own benefit; but, even if any doubt could arise, the question must arise upon the construction of the 24th George III., which, I say, amounts to a legislative supposition that the 13th did not reach to the case of a present received for the benefit of the Company.

Recapitulation.

It, therefore, seems to me, that this part of the case has so much of importance in it that I have thought it necessary to trouble your Lordships with answering it at some length, but that, upon a comparison of these two Acts and the true construction of both, it is clear and apparent that a gift or present taken by a party for the use and benefit of the Company was not forbidden by the Act of 13th George III., and is only forbidden, for the first time, by the 24th George III., which, of course, does not apply to the case of Mr. Hastings. With these observations I shall, therefore, conclude what I have to offer upon this part of the case. Having discussed once for all the construction of the Act as it applies to the case of each particular present, I shall cautiously avoid the repetition of any one of those observations in the subsequent

remarks with which I mean to trouble your Lordships; only stating that, in every instance where it shall ultimately turn out, upon a due investigation of all the circumstances, that the present was taken by Mr. Hastings for the Company and not for himself, that then I rely upon the true construction of the Act as far as the law is involved in it—namely, that the taking such present was not illegal. 16 MAY 1793.

I have now, therefore, gone into all that part of the case which precedes the receipt of these sums which are stated to have been received by Mr. Hastings subsequent to the [Act of the 13th of George III.]. Before I enter upon the consideration of these particular receipts, there are one or two observations with which it may be necessary to trouble your Lordships, as to the general state of affairs at the time which led to these receipts. Your Lordships know that, by the Act in question which passed in the year 1774, the Council, which before had consisted of twelve persons, was reduced to the number of five—Mr. Hastings, Mr. Barwell, General Clavering, Colonel Monson and Mr. Francis. The unfortunate effect of this Act of Parliament was, undoubtedly, such as, to me, at least, it seems, it was not very difficult to foresee; and it is correctly stated in one of the reports of the House of Commons that the effect of this Act, in the moment of its first operation, was to divide the Council into two totally discordant elements. That discord commenced with the arrival of the majority in India; and, from that time down to the death of Colonel Monson, which happened in the year 1776, or rather the death of Colonel Clavering, which happened in the year 1777, with respect to every great public measure, Mr. Hastings, who was at the head of the Government, found himself upon all occasions uniformly in a minority, and unable to carry into execution any one scheme which according to his judgment seemed essential for the general prosperity, or for the general safety.

The unfortunate effects of the Act.

Embarrassment of Mr. Hastings from the opposition of the majority in the Council.

Your Lordships know that, in the intermediate period, between the year 1774 and the year 1779, these events had happened;—intelligence had been received by a noble Lord, then ambassador at the court of France, of the designs of the French. Your Lordships also know that, in the year 1778, advice had been received of the war in Europe; that, in the year 1779, that great confederacy which threatened the existence of the Company's possessions in India happened—the quadruple alliance—being a union formed between the great powers in India—the Nizam, the Mahrattas, Hyder Ali and Mudaji Bosla; the effect of which was that

The war with France.

16 May 1793. they were to attack in different quarters the possessions of the Company. During the course of these two years, by the exertions of the Government, the public treasury was reduced to the lowest state. Constantly opposed by the majority of the Council, all the powers of Government enfeebled in the hands of Mr. Hastings, he found it impossible, in the course of the ordinary exercise of this power, to carry into execution those important measures which appeared to him to be necessary.

Reduced state of the treasury.

Extraordinary exertions of Mr. Hastings.

I will show your Lordships that, on every great occasion, on every important measure, he was uniformly thwarted and baffled by all those whose support was essential to him, if he could have procured it by any means whatever. But, notwithstanding this, as to all those great measures which ultimately preserved India to Great Britain, thwarted and opposed as he was, he will yet appear to your Lordships undoubtedly not daunted, but, on the contrary, daring; he will appear to your Lordships not hushed, but repressed* —not subdued, but stimulated! And you will see him with all those characteristics which peculiarly denote a great mind put to the test of arduous occasions — increase of exertion with increase of difficulty—accession of courage with accession of danger — fertility of expedient shifting with the shifting vicissitudes of misfortune— a mind that always rose to the occasion, and always towered upon it! These are the lights in which I undertake to hold up the character of Mr. Hastings to your Lordships. And, my Lords, I will go further, and I undertake to say that, when you have investigated, one by one, these transactions, in respect to which you are desired to believe him a corrupt and criminal man, you will find that they were of all others peculiarly those transactions which, being carried into effect by him against an opposing majority, by means of the different sums which he is now accused of having been criminal in having taken, secured these measures in respect of which we owe to Mr. Hastings at this moment the salvation of India, and to Mr. Hastings at this moment the possession of India to Great Britain! Having stated this, I now proceed to draw your Lordships' attention to what the first of these measures was.

Mr. Hastings' minute of the 12th of June, 1780.

Your Lordships will find that, on the 12th of June, in the year 1780, Mr. Hastings brought forward an extremely important minute, and which will require your Lordships' serious

* So in the MS.; but probably incorrectly reported.

consideration, because the transactions which it furnishes are 16 MAY 1793.
immediately introductory to two of the most essential allegations of this Charge. And, my Lords, on the 12th of June, in the year 1780—and which document I shall hereafter give in evidence—Mr. Hastings expresses himself thus :—

"The Board have been furnished with copies of the letters which have been written by Madajee Boosla and his dewan to Beneram Pundit, their vakeel or minister at this Government, containing, in a very long detail, the motives and views of the Government of Berar. These I think improper to be entered on our records, but I recommend them to the attention of the Board, in their consideration of their conduct which we are to observe before that Government. From the declarations made in these letters, and from other advices, it appears that, urged by the demands of the administration at Poonah, and the menaces of the Nabob, Nizam ud Mulck, the Rajah hath levied a considerable force, said to consist of 50,000 horse, ostensibly destined to co-operate with the peshwa by invading Bengal and the dominions of our ally, the Nabob of Oude; that one division of 30,000 horse, commanded by Chimnagee Boosla, the Rajah's second son, has been accordingly dispatched to our frontier by the road of Cuttack, and has been some time since arrived in the neighbourhood of that city, where it is proposed that it shall cantoon during the rainy season." *

Mr. Hastings' recommendation to conciliate Mudaji Bosla.

The first measure, therefore, which Mr. Hastings, on the 12th of June, presents to the consideration of the Board is [with reference to] a force amounting to 50,000 horse; 30,000 of which were at that moment upon our frontiers under Chimnaji Bosla, the son of the Raja of Berar, meditating the invasion of Bengal. My Lords, how this danger was to be averted was the consideration for that occasion. And your Lordships will find that Mr. Hastings, in a subsequent part of the minute, states that it appears to be the proper policy of the Government to consider and treat the Raja of Berar in the character which he professes, but to guard against the possibility of his becoming hostile. And, for the purpose of guarding against that possibility, Mr. Hastings proposes that the Board may avail themselves of the favourable disposition which the Raja of Berar is said to have shown; it being alleged on his behalf that he was induced to join this confederacy against his own will, and merely from the superior power of them that drew him into it; and, therefore, Mr. Hastings proposes that the Board should avail themselves of this favourable disposition ;—let his mediation be accepted, and his diwan invited to come for that purpose to Calcutta. This, therefore, forms one essential object of this minute, which Mr. Hastings, on the 12th of June, brought to the Board—namely, how he should detach the

* Printed in the "Minutes of the Evidence," p. 2124.

16 MAY 1793. Raja of Berar from this quadruple alliance, and avert the force of this body of 30,000 horse, ready to burst forth upon the province of Bengal.

Your Lordships will see that it connects with the subsequent part of the case in a manner that it is absolutely necessary to explain it, and in respect of which I shall trust your Lordships will not merely acquit Mr. Hastings of having acted a criminal part, but that your Lordships will think he is intitled to the highest praise and to the greatest commendation. The other object which in this minute Mr. Hastings holds forth to the adoption of the Board is this, with respect to Madaji Scindia, who is another of the parties who had entered into this confederacy:—

Recommendation of a feint on the capital of Madaji Scindia.

"I recommend that the order lately passed for the reduction of Captain Popham's detachment be suspended; that the sepoys of the detachment be immediately formed into three regular battalions, and added to the detachment allotted to Major Camac. Let it be given in instructions to Major Camac, if he shall find it practicable, to march his detachment, in conjunction with the forces which the Rana, by his treaty, will be obliged in such a case to furnish, directly to Oogein, the capital of the territory dependent upon Madaji Scindia. This cannot fail to divert him from the war in Guzerat, and, by bringing it home to his own interests, which have hitherto been wholly exempted from it, induce him to be an equal solicitor for peace, to which at this time he appears to be the only impediment."

So that here your Lordships see that the object of Mr. Hastings was to detach Madaji Scindia from the grand confederacy; by that means to remove the only impediment to peace; and that, for this purpose, he proproses that a detachment shoald be sent by Major Camac to Oojein, the capital of Madaji Scindia, which attack, he states, will draw him off to the preservation and protection of his own territories. He then states, in order to defray the expenses of this detachment,—

Recommendation of a demand on Cheyt Sing.

"I propose to the Board, as the season is now approaching in which our demand upon Rajah Cheit Sing for the payment of his annual contribution towards the expences of the war should be made, we do immediately instruct our Resident at Benares to apply to him for the sum of five lacks of rupees; which sum, I propose, shall be appropriated solely to the payment of Major Camac's detachment."

He then concludes this minute with these emphatic words—

"I entreat the Board to give me their support in the prosecution of this plan."

What plan? Not a plan that related to himself, but to the essential interests of the public!

"If they have been, from its commencement, averse to the war, let them join with me in prosecuting it with vigour to its speedy determination. If they consider themselves as free from the responsibility of it, let them allow me to acquit myself of mine. I wish I could venture my life upon the consequences." 16 MAY 1793.

My Lords, weigh every line of this important paper, and then tell me whether you think that you trace here the sentiments of a man who at this moment had no thought but for himself—who would sacrifice and betray the interests of the public as committed to his charge; or whether there is not apparent in every part of it a zeal, an ardour, an enthusiasm for the public service, that prompted every thought—that excited every feeling—that kindled every wish—and that would have led Mr. Hastings to do that cheerfully which he states—to risk his life upon the success of these measures if the public safety had required! Judge, then, of the character and conduct of Mr. Hastings, at least in the instance of this transaction, not merely from the concluding words of this minute, but from the whole of it; which will evince in every part his attention to the public interests, and the zeal they excited in his mind. Mr. Hastings' zeal and disinterestedness.

I would also beg your Lordships to bear in mind that, upon the 12th of June 1780, in the course of this minute, Mr. Hastings distinctly predicted this;—that an attack upon Oojein, the capital of Madaji Scindia, would draw off his attention from the war in the Guzerat to the defence of his own territories, and be, in doing that, the means of removing the only obstacle to a peace. These emphatic words I beg of your Lordships now to bear in your recollection, and give me credit for applying them more fully hereafter. Importance of the proposed attack upon Oojein.

With respect to those two proposals, your Lordships will find a minute from Mr. Wheler and Mr. Francis entered in the consultation of the 15th of June, 1780. I should have stated that at this time Mr. Barwell had departed for Europe. The Council, therefore, merely consisted of Mr. Hastings, Mr. Francis and Mr. Wheler. Mr. Francis and Mr. Wheler were joined in opposition to Mr. Hastings; and, therefore, though these measures appeared to [him] so essential to be carried into execution that he deemed the public safety absolutely to depend upon them, it was absolutely impossible that he should carry either without the concurrence of one or both of these gentlemen. Reduced number of the Council.

In the minute of the 15th of June, 1780, delivered in by Mr. Francis and Mr. Wheler, in answer to that of Mr. Hastings, with respect to the first of these propositions—namely, Agreement of Mr. Francis and Mr. Wheler

16 MAY 1793. to the first proposition. that they should avail themselves of the mediation of the minister of the Raja of Berar, they express themselves thus:—

"On this principle, we agree with the Governor General that it may be advisable to avail ourselves of the favourable disposition of the Berar Government, and to invite the Rajah's dewan to come for that purpose to Calcutta."

So far, therefore, Mr. Wheler and Mr. Francis are agreed with Mr. Hastings; and your Lordships will find that in consequence of this the Raja's diwan did come to Calcutta; a material fact, as will appear to your Lordships in the sequel of this business.

Their objection to the attack on Madaji Scindia. With respect to the other and the most important object, that is, the proposed attack upon the dominions of Madaji Scindia, they object to it, chiefly on the ground of expense. They say—

"In our judgment, it leads to an additional expence, which we cannot limit when once it is begun, and which, we are very sure, this Government is not in a condition to support."

According to Mr. Francis and Mr. Wheler, on the 12th of June, 1780, the Government was not in a condition to support the additional expense of a detachment under Major Camac for the purpose of an attack upon Oojein, though connected with that attack was the restoration of a general peace. I beg that this circumstance of the inability of the Government to maintain this expense may not be forgotten.

They then go on and state the condition of the public treasury; they draw a frightful picture of public affairs in every department of Government, and they conclude with explicitly refusing their assent to this proposition of Mr. Hastings. They say, there is but a certain sum at that time in the treasury, and, therefore, they will not permit it to be drawn out, and there it must remain as a last resource: it cannot be applied to this service. Whether or not this policy was wise it is not for me to say. It seems to me, however, I own, to be a most extraordinary idea, that they should consider the public treasury as the end and not the means; and that, where everything depended upon the issue of money for the public service, they should think it better to be locked up there than apply it to that use. However, whatever might be the motive or the reasons of these gentlemen, they distinctly opposed the proposition, on the ground that the Government is not in a condition to maintain the expense. Mr. Hastings felt himself, as your Lordships may

readily conceive, extremely disappointed as to the success of plans which appeared to him at the time to be extremely important to the public, and which, I trust, will appear to your Lordships hereafter, undoubtedly, to have been so. 16 MAY 1793.

Mr. Hastings' minute in reply.

Your Lordships, in pursuing this subject, will find that, in the consultation of the the 26th of June, 1780, there is a minute of Mr. Hastings, in addition to the former, delivered in by Mr. Francis and Mr. Wheler; and in that minute Mr. Hastings expresses himself thus:—

"It is not my intention to follow these minutes through every assertion of facts and every deduction of argument. I shall only reply to such points as have any relation to the present purpose. Except the article of expence, I can scarcely collect the objections that are made to it. All these objections, then, resolve themselves into the article of expence. The objection made to the expence is a material one, but a vigorous exertion cannot be made without expence; nor can the war be either concluded honorably or prosecuted successfully without such an exertion."

In the concluding part of this minute, he says thus:—

"The part which this Government has hitherto borne in the war is mine, and has been made exclusively mine; the other members having repeatedly disclaimed their share in the responsibility attending it. It is hard that, while they load me with the weight of such a charge, they should bind my hands and deny me the means of supporting it. If Mr. Francis—I am compelled to speak thus plainly—thinks that he can better and more effectually conduct the war to the termination which we both profess to aim at, and that he can in honour deprive me of the right which I claim to dictate the means of accomplishing it, let him avowedly take the lead; but, if I am to be charged with the consequences of it, let him allow me to possess and exercise it. It is impossible to combine the principles of enterprise and inaction in the same general measure, and as impossible for his sentiments and mine to be brought into agreement on the subject of the Mahratta war. I have, in vain, laboured to accommodate them by a studied attention to his opinion in every measure which I have ventured to propose in the course of the last fifteen months, and have restrained myself from urging others which, however proper and necessary for the occasion, exclusively considered, were inconsistent with the actual state and temper of this Government. I now advert to my proposition, and request the Board to reconsider their objections to the instructions which I have proposed to be given to Major Camac. I have not the presumption to expect that they will be influenced by any reasonings which I have used; having had too much experience of the insufficiency of official argument to overcome a decided and, much less, a confederate opposition; but, as the expence which will attend the measure which I have recommended is the only formal objection made to it, I hope I may be allowed to remove it by offering to exonerate the Company from it and take it upon myself. That this proposition may not be misunderstood, and that I may not bind myself by engagements which it may exceed my power to fulfil, I will explain myself."

Offers to take the expense of the expedition upon himself.

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Mr. Hastings then goes into a calculation of the expense, which he concludes by saying,—

Deposits two lacs with the treasurer.

"The contingencies of the detachment are, therefore, the only expence that can be reasonably charged to the expedition. These I rate far below two lacks of rupees. That sum I offer to contribute to this disbursement: I have already deposited it, within a small amount, in the hands of the snb-treasurer, and I beg that the Board will permit it to be accepted for that service."

Now, having stated to your Lordships that it appears that, upon the 26th of June, 1780, in consequence of Mr. Francis and Mr. Wheler having opposed this measure, on the ground that the Government was unable to incur the expense, Mr. Hastings came forward with a proposition, offering to contribute the sum of two lacs of rupees, to be appropriated to the specific purpose of paying the contingencies of the detachment which were to make the attack upon Oojein, the capital of Madaji Scindia, [I must add that] these two lacs of rupees appear to have been a sum of money which I admit at that time did not belong to Mr. Hastings, but were a sum of money which, a few days before, he had received from Sadanund, the wakil of the Raja Cheyt Sing; and the question for your Lordships' consideration will be, under all the circumstances of this case, whether that sum received from Cheyt Sing was by Mr. Hastings received for his own use and benefit, or for that of the Company.

The two lacs previously received from Cheyt Sing.

The offer of this sum appears to have been made on the 26th of June, 1780. On recurring to the evidence which is given by the honourable Managers as applying to the Benares Charge, your Lordships will find that the offer of the two lacs was made by Sadanund, the wakil of Cheyt Sing, to Mr. Hastings, on the 19th of June, in the same year—that is, seven days before Mr. Hastings at the Board offers to contribute this very sum to the public service. The first fact, therefore, that appears is, that, so early as seven days after the offer of this sum by Sadanund, Mr. Hastings came forward to the Board, and particularly desired that he might be permitted to apply it to a purpose of his own—that is, to this measure, which, on the ground of expense alone, Mr. Francis and Mr. Wheler had opposed.

The proposal of Mr. Hastings made within seven days of the receipt.

The first question, therefore, will be—can your Lordships believe it possible that, seven days after, when this sum is offered to be appropriated to the public service—and the offer could only be made in consequence of the idea that it would be accepted—can your Lordships in such a case

believe that—were there no other evidence—Mr. Hastings did not, at the time of taking this sum from Cheyt Sing, mean to apply it to the very purpose to which, seven days after, he becomes himself a suitor to the Board that he may be permitted to appropriate it? But how are these seven intervening days filled up? Your Lordships learn it distinctly from Mr. Larkins' account, which will be found in the printed Evidence, page 1155. Mr. Larkins states thus:— 16 May 1793.

"The fourth sum stated in Mr. Hastings' account was the produce of sundry payments made to him by Sadanund, Cheit Sing's buxy, on the 21st of June, 1780. Two days after the conversation between Sadanund and Mr. Hastings, Mr. Hastings sent for me and desired that I would take charge of a present that had been offered to him by Cheit Sing's buxy. Mr. Hastings declared that, although he would not take this for his own use, he would apply it to that of the Company, in removing Mr. Francis's objections to the want of a fund for defraying the extraordinary expences of Colonel Camac's detachment."

So that here, two days after the offer, before ever the sum was paid, your Lordships have it distinctly proved, on the part of the prosecution, that Mr. Larkins, the Accountant General of the Company, was sent for by Mr. Hastings, and expressly desired to take charge of this sum on behalf of the Company; Mr. Hastings explaining to him that his purpose for taking it was to remove the objection to the Malway expedition, which consisted in the extraordinary expense of it, as made by Mr. Francis. This happened on the 21st. On the 26th, five days after, you find him doing the very thing which, on the 21st, he stated to Mr. Larkins he meant to do; and, at the Board, you find him desiring them to permit him to appropriate that sum which, in his conversation on the 21st with Mr. Larkins, he explains himself to have taken merely for that very purpose. Here, again, I beg your Lordships to consider upon what ground it is possible—when, the very day after the offer was made, before even the money is received, Mr. Hastings sends for Mr. Larkins and expressly states that he will not keep it himself, but he takes it for the Company—when you find that five days after he applies it to the use of the Company —I beg to know upon what ground it is that the honourable Managers can contend, in opposition to all this evidence, that Mr. Hastings ever did, during a single instant of time, entertain any idea of appropriating this money to his own use and benefit? Thus, then, it stands with respect to this evidence,

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Mr. Hastings charged with having offered the money as his own.

But it is said that Mr. Hastings offered this money as his own, upon the 26th of June, 1780. Be it so: surely the reason for this is sufficiently obvious. If he had stated that it was not his own, but belonged to the public, then, undoubtedly, these gentlemen would not have permitted it to be applied to that service, for the application to which, however, Mr. Hastings took it. If, upon the 26th of June, he had said—"this money does not belong to me, but to the Company," they would have said—"then you shall not apply it to defray the extraordinary expenses of this detachment;" and, in stating, therefore, that it belonged to the Company and not to himself, he would have defeated that which was his express object at the time. But this observation on the part of the honourable Managers, by proving too much, proves nothing; for the stating it to be his own is of no use further than this—that is, stating it to be his own he meant to make it his own. But how can that be inferred, when your Lordships find, five days before, on the 21st, so far from making it his own, he had deposited it in the hands of the accountant of the Company, as a sum for their use and benefit? His stating it as his own on the 26th cannot prove that he meant to appropriate it to himself, because he, on the 21st, had appropriated it to the Company; and the reason why he stated it to be his own was, because otherwise he must have completely disappointed himself in the purpose to which he meant to apply it.

He forwards an account of the transaction to the Directors.

Thus, then, it continued till the 29th of November, 1780, when the first ship in the service of the Company sailed from India to Europe. And here, again, your Lordships will find that in that letter he distinctly informs the court of Directors of this fact—that the money which he had stated to be his own did not belong to himself, but to them. So that, trace the conduct of Mr. Hastings from its origin—take the conversation between him and Mr. Larkins the day after—take what passed at the Board on the 26th—take what passed, on the 29th, in the letter to the Directors—you will find him, uniformly and in every instance, from the beginning to the close of the transaction, acting upon an idea that he never did for any one moment mean to appropriate that sum to himself.

The return of Mr. Francis to Europe alleged as the cause.

But it is said—for the honourable Managers feel it necessary to get rid of the letter of the 29th of November, 1780—it is said, that at this time Mr. Francis was departing for Europe; and, owing, therefore, to the departure of Mr.

Francis it is that they impute that, on the 29th of November, 1780, Mr. Hastings, in a letter to the Directors, informed them of the receipt of these sums. I admit that it does appear that, on the 29th of November, 1780, Mr. Francis was on the point of departure for Europe. But what does this prove? Either Mr. Francis knew of the receipt of the sum of two lacs of rupees, or he did not: either Mr. Hastings believed Mr. Francis to know of it, or he did not. Now take it each way:—if Mr. Francis knew of the receipt of two lacs of rupees, at the time of the receipt, and the knowledge of Mr. Francis was also known to Mr. Hastings, then what becomes of all the observations drawn from the circumstance of Mr. Hastings representing the money to be his own? It was quite impossible, if at that time Mr. Hastings knew that Mr. Francis was informed the money did not belong to him. On the other hand, if Mr. Francis did not know it, what becomes of the inference of the honourable Managers, that his departure for Europe could have any effect whatever on the mind of Mr. Hastings? 16 May 1793.

But, my Lords, it does not rest even here, for though, on the 29th of November, 1780, Mr. Francis might be departing for Europe, will the honourable Managers state that, on the 26th of June, 1780, or on the 21st of June, 1780, Mr. Francis was departing for Europe? No such thing! Therefore it appears that, long previous to the letter of the 29th of November, Mr. Hastings had disclosed the circumstance to Mr. Larkins, and had appropriated the money to the public service; and therefore it is quite impossible that what passed upon the 21st and 26th could be imputed to that event, which was not then known and depending—namely, the departure of Mr. Francis for Europe; and which, if it had been depending, could have no application whatever to the subject, unless it proved this—that Mr. Francis knew the receipt of the two lacs upon the 21st of June, 1780, and afterwards upon the 26th; and that Mr. Hastings was apprised of this fact. Now, if Mr. Hastings had been apprised of this fact, it is perfectly clear that it could have answered no purpose whatever to state the money as his own, in opposition to the knowledge of Mr. Francis; and therefore it is quite impossible to explain, by the intended departure of Mr. Francis, the communication to the Directors of the 29th; because it appears that was but a necessary consequence of what had happened in the conversation with Mr. Larkins, and what passed afterwards at the Board,

Previous disclosure of the transaction to Mr. Larkins.

16 MAY 1793. upon the 26th. Therefore nothing can be more clear from the whole of this evidence, with respect to this first sum taken from Raja Cheyt Sing by Mr. Hastings, than that it was taken by him, not for his own use and benefit, but to be applied to a great public purpose—namely, the defraying the expenses of this detachment, which Mr. Wheler and Mr. Francis had declared the Government so exhausted as not to be able to support; and which measure being afterwards carried into execution, I will prove to your Lordships, is the chief cause to which the preservation of India is to be ascribed.

Conclusion that Mr. Hastings received the sum for the benefit of the Company.

Now I beg of your Lordships to consider all these circumstances with respect to the first present, and then to say whether you are not in your own consciences convinced that the cause of Mr. Hastings taking it was, that it might be applied to the public service, and that he never did, with respect to this sum—as I shall show was the case in every other instance—that he never did entertain a thought so mean, so base and so corrupt, as to apply it to his own use.

Mr. Hastings' letter to the Directors of the 29th November, 1780, alleged to be false.

My Lords, I have now gone through this part of the case—that is, the receipt of the present from Raja Cheyt Sing. There is also other evidence which applies to this subject; for your Lordships will find that the honourable Managers have given evidence to show that every part of the letter of the 29th November, 1780, which I have stated to your Lordships was a communication to the court of Directors, is false; for in page 1105, the honourable Managers state this—that they will proceed to falsify the before-mentioned letter of the 29th of November, 1780, in all its parts. This is the pledge on the part of the honourable Managers—falsification of this letter in all its parts.

Now I will put the cause in this respect upon this ground: compare this assertion of the honourable Managers, after I have examined it throughout, with the letter in question, and I only call upon your Lordships to decide which of [them] contains the greatest proportion of truth, the letter which the honourable Managers say to be false in all its parts, or the assertion of the honourable Managers in which that fact is stated.

Dealings with the Raja of Berar.

The latter part of the letter of the 29th of November, 1780, relates to the distinct transaction to which I have been taking occasion to draw the attention of the Court—that is, the conduct of the Government at Calcutta with respect to the Raja of Berar. I have already mentioned that, in consequence of the resolution of the Board, the diwan of the

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Distress of the Raja's army for payment.

Offer to supply money on condition of his assisting the British.

Necessity of secrecy.

Raja of Berar came to Calcutta for the purpose of negotiating an accommodation with Mr. Hastings. At that time there had been a considerable correspondence—proofs of which we shall hereafter give in evidence—between the Government of Berar and that of Calcutta; and it appeared that the army of Chimnagi Bosla was in considerable distress for want of the payment of their arrears. How to conciliate this formidable power, and from a foe to convert him into a friend, was the study of Mr. Hastings. An offer was made to him of a considerable sum of money in order to pay those arrears, and, in consideration of which money, it was stipulated on his part, that he should appear to those with whom he was leagued to be acting against us, but that he should secretly be giving us all the assistance in his power. Mr. Hastings had received an assurance that the furnishing him with a sum of money would receive the support of Sir Eyre Coote, but he knew it would be opposed by Mr. Wheler and Mr. Francis; and the very circumstance of bringing it forward at the Board would have made public that which in its nature was necessary to be secret—that is, the receipt of a sum of money by this power to detach him from the confederacy, the knowledge of which, if it had reached his allies, must undoubtedly have terminated in his ruin. Speaking of this transaction, Mr. Hastings, who had previously determined, on his own account and at his own responsibility, to furnish a sum of money to the Raja of Berar, gives this account of it to the Directors. At the conclusion of his letter of the 29th of November, 1780, after describing the confederacy which had been formed, and the part which the Government of Berar was required to take, Mr. Hastings states this:—

The account of the transaction given to the Directors.

"An application had been made to us for a supply of money, and the sum specified for the complete relief of the army was sixteen lacks. We had neither money to spare nor, in the apparent state of that Government in its relation to ours, would it have been either prudent or consistent with our public credit to have afforded it. It was, nevertheless, my decided opinion that some aid should be given, not less as a necessary relief than as an indication of confidence, and a return for the many instances of substantial kindness which we had within the course of the last two years experienced from the Government of Berar. I had an assurance that such a proposal would receive the acquiescence of the Board; but I knew that it would not pass without opposition. And it would have become public, which might have defeated its purpose. Convinced of the necessity of the expedient and assured of the sincerity of the Government of Berar, from evidences of stronger proof to me than I could make them appear to the other members of the Board, I resolved to adopt it and take the entire responsibility of it upon myself. In this mode a less consider-

16 May 1793. able sum would suffice; I accordingly caused three lacks of rupees to be delivered to the minister of the Rajah of Berar, resident in Calcutta. He has transmitted it to Cultac. Two thirds of this sum I have raised by my own credit, and shall charge it in my official accounts. The other third I have supplied from the cash in my hands belonging to the honourable Company. I have given due notice to Moodajee Boosla of this transaction, and explained it to have been a private act of my own, unknown to the other members of the Council. I have given him expectations of the remainder of the amount required for the arrears of his army, proportioned to the extent to which he may put it in my power to propose it as a public gratuity by his effectual orders for the recall of these troops or for their junction with ours."*

Method of raising the money.

And, my Lords, this brings me to consider a transaction which has occupied a great deal of your Lordships' attention:—I mean the story of the three bonds which constituted this sum furnished upon the 16th of October, 1780, to the Raja of Berar; and which circumstance, however much at present it may be involved in obscurity by the manner in which it has been discussed upon the part of the prosecution, when I have traced it from its beginning to its close, if I am but able to convey my ideas to your Lordships with as much distinctness as they exist in my own mind, I pledge myself to show that, even with respect to this as with respect to the former transaction, there is not the slightest ground or foundation whatever to suspect for a moment, as to the conduct of Mr. Hastings, an intent in any degree corrupt, with respect to any part of this transaction. And, my Lords, before I come to the examination of this part of the case, I would state distinctly to your Lordships that the sum which was paid to the Raja of Berar consisted of three lacs of rupees.

Story of the three bonds.

* Printed in the "Minutes of the Evidence," p. 1104.

CONTINUATION OF THE SPEECH OF ROBERT DALLAS, ESQ., COUNSEL FOR MR. HASTINGS, IN OPENING THE DEFENCE UPON THE SIXTH, SEVENTH AND FOURTEENTH, ARTICLES OF THE CHARGE, RELATING TO PRESENTS; 17 MAY, 1793.

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The payment of three lacs to the Raja of Berar.

My Lords, the subject to which I was endeavouring to draw your Lordships' attention, when the Court last adjourned, was a sum of three lacs of rupees, stated to have been delivered by Mr. Hastings to the minister of the Raja of Berar, resident in Calcutta, on the 16th of October, in the year 1780; and in respect to which transaction, the honourable Managers conceive that it furnishes them with much evidence to prove a corrupt and criminal intention, with respect to this and other parts of the conduct of Mr. Hastings.

Two thirds of the sum belonging to the Company, one to Mr. Hastings.

My Lords, I have already stated, from a passage in the letter of Mr. Larkins, that this sum consisted of three lacs of rupees; two of them belonging to the Company, being a sum which on the 3rd of October Mr. Hastings had, by his agent, received from Dinagepore, and one of them being a sum that belonged to himself. The supply, therefore, delivered to the minister of the Raja of Berar was made up of two lacs belonging to the Company and one belonging to Mr. Hastings. And, my Lords, this fact is completely and satisfactorily established by the evidence produced on the part of the honourable Managers, consisting of a letter of Mr. Larkins, which they have laid upon the table.

Error in the account forwarded by Mr. Hastings to the Directors.

My Lords, in point of fact, it appears from the passage in the letter of the 29th of November, 1780, from Mr. Hastings to the court of Directors, giving them information of this transaction, that he states the fact different from what it turns out to be, because in that letter he informs the court of Directors that two thirds belong to him and one to them; whereas, on the contrary, one only belonged to him and two to them. My Lords, that is a fact about which there can be no difficulty or doubt whatever. The honourable Managers, on the one hand, insist that this of itself furnishes evidence of a corrupt and fraudulent intention upon the part of Mr.

17 May 1793. Hastings, and that it shows in this instance a desire and an intention to appropriate to his own use and benefit that which belonged, not to him, but to the East India Company.

No evidence of corrupt intention.

My Lords, I might for the sake of argument admit all that the honourable Managers have contended in this respect, and I might put it as a possible case that, once in his life and differing from himself upon all other occasions, Mr. Hastings had done that which the honourable Managers impute to him; but about which, I trust, I shall have no difficulty whatever in satisfying your Lordships, from an accurate investigation of those documents, that precisely the reverse is the case, and that it is utterly impossible, consistently with any one principle of reason or probability, to put that construction on the conduct of Mr. Hastings which the honourable Managers seek to fasten upon it.

No allegation in the Charge of sums received from Dinagepore or Nuddea.

Before, however, I enter into the examination of the subject, it will be necessary for me to state to your Lordships what I mean when I say, that I might concede to the honourable Managers all they contend for in this respect, without the purpose of their Charge being in the slightest degree advanced. The sum in question consisted, as I have stated, of two lacs of rupees belonging to Dinagepore; and your Lordships, upon referring to the Charge, will find there is no allegation whatever of any sum taken either from Dinagepore or Nuddea. If, therefore, it should turn out, in point of fact, contrary however to what it will, that Mr. Hastings had in both these instances received such sums and not accounted for them, still it would in no respect whatever apply to any part of the present accusation. I trust that your Lordships will think me perfectly correct when I state the subject in this way, after I have drawn your attention to the manner in which this evidence was introduced by the honourable Managers.

Purpose of Managers' evidence.

Your Lordships will find, in page 1113 of the printed Minutes,—

"The Managers for the Commons stated that they had produced the evidence submitted to the House to show the receipt of a very large sum of money acknowledged by Mr. Hastings, and, also, for the further purpose of showing that the other two thirds, which he said he had borrowed from somebody else and lent to the Company, had never been borrowed by him, nor ever had been lent to the Company, but that in fact, they always did belong to the Company.

"The Counsel for the Defendant observed that the Managers for the Commons have stated the evidence to be produced for two purposes,—one to falsify an allegation in a former letter of Mr. Hastings, and the other to establish the receipt of a further sum of money."

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Here, then, are the two objects, as stated by the Counsel for the Defendant, for which, according to their conception, at least, of the subject, the honourable Managers produced this evidence. The one was to falsify the allegation in the former letter of Mr. Hastings of the 29th of November, 1780, in a former page of the Minutes, to which I drew your attention on a former occasion. Your Lordships will find, the honourable Managers undertook to falsify the letter in question, that is, the letter of the 29th of November, 1780, in all those parts; and for this purpose they produced this among other evidence. Nothing, however, can be more clear than that, the fact of the receipt of the money from the Raja Cheyt Sing, and the application of that money to the use and service of the public, being fully established, it is perfectly immaterial whether every other part of that letter be completely false, if every other part of that letter have no relation whatever to the subject of the Charge.

Failure of its aim.

To the subject of the Charge the other parts of this letter, which refer to the receipt of these three lacs of rupees, can have no relation, because I have distinctly stated that they are not the subject of the Charge. When, therefore, the honourable Managers tendered this evidence to the Court, the Counsel for the Defendant called upon them to know to what purpose it was that they applied it. The Counsel for the Defendant then stated, that, as far as it was intended to establish the receipt of a sum of money not specified in the Charges, so far they conceived it not admissible in evidence, and so far they should resist it. The Managers for the Commons replied, that, when they proceeded to charge Mr. Hastings with the receipt of any sum of money not charged in the Articles, it would be time enough for the Counsel to make the objection, but, at present, all that they offered the evidence in question for was, to falsify the account which Mr. Hastings gave upon the 29th of November, 1780; and for that purpose they had a complete right to produce it.

Its inadmissibility.

All, therefore, that the honourable Managers for the Commons have explained themselves to have produced this evidence to your Lordships to effect was, to falsify the account in the letter of the 29th of November, 1780. The letter of the 29th of November, 1780, which the evidence was to be applied to falsify, stated the application of the money from Cheyt Sing to the service of the Company; which application, however, I trust I have by this time established beyond a possibility of doubt. The evidence, there-

17 May 1793. fore, completely fails, compared with the purpose to which it is applied. Having stated this, let not the honourable Managers, however, suppose that I mean to shrink from the investigation of this question, because I am as anxious to meet them upon this ground as they can be to take their place there; and, I think, I can satisfy your Lordships, as at least I have satisfied my own mind, after the best investigation I have been able to give it, that it is utterly impossible to impute to Mr. Hastings, merely from the circumstance which occurs in the letter of the 29th November, 1780, stating the two thirds to belong to himself instead of one, that any fraud whatever could be intended.

The question to be argued upon its merits.

Charge of intention to defraud the Company.

My Lords, the argument upon the part of the honourable Managers must stand entirely upon this foundation;—that, at the time that Mr. Hastings asserted two thirds of these three lacs to belong to himself and one third only to the Company, he was conscious that the reverse was the truth, and, therefore, that in that respect he meant to defraud the Company of these three bonds. It appears that one undoubtedly did belong to himself. That is now established by the evidence of Mr. Larkins. Two belonged to the Company. When, therefore, he stated that two belonged to himself and one belonged to the Company, it turned out, in the result, that of that which belonged to the Company he took one to himself and gave one to them. So that it is quite clear, even according to that fact, that at that time Mr. Hastings, of the two lacs which did belong to the Company, admitted one to be their property.

Fraud, then, is the foundation upon which this argument must stand upon the part of the honourable Managers. They must contend that Mr. Hastings, previous to this time, had corruptly and criminally, by fraud and contrivance, procured the sum of two lacs of rupees from the Raja of Dinagepore; and they [must] go the length of contending that he procured it, meaning to keep it and apply it to his own benefit. Nothing can be more clear than that, if such were the purpose of Mr. Hastings, at least upon the 16th of October, when he delivered this sum to the minister of the Raja of Berar, that purpose had completely succeeded; because I have shown your Lordships that he was in the possession of these two lacs upon the 2nd and 3rd of October, the day on which they were paid to Mr. Crofts.

My Lords, it is equally clear that, if such really had been the purpose of Mr. Hastings—if he had procured for him-

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self these two lacs by contrivance and fraud—it is utterly repugnant to the most common principles of human action to suppose that, on the 16th of October, he would give one of these two lacs to the Company; and yet the supposition must go to that extent, because on the 16th of October he states only one of them to belong to himself, and, therefore, he gives the Company credit for the other. I beg, therefore, your Lordships to bear this fact in mind, that, besides the two lacs of rupees with which Mr. Hastings charged himself in the letter of the 29th of November, as received from the Raja Cheyt Sing, he also charged himself to the East India Company with the receipt of another lac which belonged to them, and which lac he stated himself to have delivered to the minister of the Raja of Berar.

Description of the four bonds received by Mr. Hastings.

I do not know whether I make myself perfectly understood upon this part of the subject, but undoubtedly it is material. Your Lordships will afterwards discover that there were in the whole four bonds. Two of them were the bonds taken for the Dinagepore money; one was a bond taken upon the 23rd of November, subsequent to this period of the 16th of October, for the money which had been received from Nuddea; and the fourth was the bond of which Mr. Larkins speaks, which was given to Mr. Hastings for the lac which belonged to himself. There are, therefore, only four lacs in the whole to be accounted for. Three of them are accounted for by the accounts in evidence upon your table; consisting in the two lacs from Dinagepore and the lac from Nuddea. The other lac, therefore, of course, belonged to Mr. Hastings, in the manner Mr. Crofts has stated, on the 29th of October, 1780. We must, therefore, put entirely out of our consideration the lac which belonged to Mr. Hastings; and, when he delivered this sum to the Raja of Berar, it will then clearly appear that he delivered two lacs which belonged to the Company and one which belonged to himself. As far, therefore, as he stated that two belonged to himself, undoubtedly he was incorrect; but one did belong to himself out of the three, therefore he only stated one to belong to himself more than was his property..

Error in Mr. Hastings' account to the amount of one lac.

It is impossible to suppose that, if, at this time, Mr. Hastings had meant to conceal the receipt of these two lacs from the Company, he would actually have informed them of the receipt of one and then applied that one to the public service; because your Lordships must then make him at once the most mercenary and the most generous of men;—you

17 MAY 1793. must bring your minds to this conclusion—that, after he had with contrivance possessed himself of a bribe amounting to 20,000*l.*, he gave one part of that bribe and applied it to the public service, without even taking to himself the credit of such a measure! This is a conduct so repugnant to every principle of human action, that it is impossible to conceive that such could have been the motive of Mr. Hastings upon this occasion. It therefore appears in this case, as it did in the former, that the two lacs of rupees which were received from the Raja of Dinagepore never were in the possession of Mr. Hastings, but that, being delivered into the custody of Mr. Crofts, who was the sub-treasurer to the Company, on the 2nd and 3rd of October, they were by Mr. Crofts, on the 16th of October, delivered to the minister of the Raja of Berar, and by him forwarded to the person whom he represented, in prosecution of that essential plan which Mr. Hastings had proposed in the minute of the 21st of June. So that, here again, there is, immediately after the receipt of it—not by the hand of Mr. Hastings but of another—an appropriation of the whole of these two lacs to the public service.

Absence of fraudulent intention.

The honourable Manager upon this circumstance observed that—

"They will falsify the above-mentioned letter in all its parts; for which purpose they will produce a secret consultation of the 9th of January, 1781, from which it would appear that that part of the letter in which it was stated by Mr. Hastings that 'two thirds of these sums therein mentioned was raised on his own credit, and he should charge it in his official accounts,' [and that 'the other third he had supplied from cash in his hands belonging to the Company,'] was not true."*

And for this purpose they give in evidence a letter of the 9th of January, 1781.

Application of Mr. Hastings for three bonds for money paid to the Raja of Berar.

My Lords, this letter is an application on the part of Mr. Hastings to the Board for three bonds, being bonds for the money which he had given to the Raja of Berar; and the first inference that the honourable Managers draw from this transaction is, that by applying for these bonds on the 9th of January, 1781, Mr. Hastings in effect treated the property as his own and meant to preserve it as such.

This, however, on a moment's consideration, will be found to be utterly inconsistent with the preceding conduct of this gentleman; because it plainly appears that, upon the 29th of November, 1780,—that is, two months before the period in

* See "Minutes of the Evidence," p. 1105.

question—he had actually written to the court of Directors charging himself with the receipt of one of those lacs on their account, for which, however, he afterwards applies for a bond to the Board, on the 9th of February, 1781. It is, therefore, utterly impossible to infer that, upon the 9th of January, 1781, by applying for these bonds, he meant to keep that lac as a sum belonging to him and not to the Company, which, two months before, he had apprised the Company belonged to them and not to him.

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Previous admission that one lac belonged to the Company.

It seems, therefore, to me that a moment's consideration is quite sufficient to put this inference to flight. There is upon the face of this letter another material circumstance for your Lordships' observation. The bonds are applied for in this way:—the one is to be granted upon the terms of the second loan; the other is to be granted upon the terms of the first loan; and the third also upon the terms of the first loan. Thus, your Lordships perceive that the three bonds which are granted upon the 9th of January, 1781, are expressly distinguished by Mr. Hastings in the moment when he applies for them; two being taken for some purpose or other—what I do not at present pretend to point out, but hereafter that purpose I shall explain—two being taken in the first loan, while the third is taken in the second. There was, therefore, some reason or other which existed in the mind of Mr. Hastings for this distinction between the bonds on the 9th of January, 1781.

Distinction made by him between his own and the Company's bonds.

My Lords, the reason for it was this—that these were the bonds, as I have before stated, granted for the money given to the Raja of Dinagepore. Two of these lacs belonged to the Company and one only to himself. For this, therefore, which belonged to the Company he took two bonds in the same loan, and for that which belonged to himself he took a bond in a different loan. So that here you find Mr. Hastings, the moment he is coming forward to do any one act with respect to his property, evidently distinguishing between that which belonged to himself and that which belonged to the Company—taking the two bonds in the first, and the latter in the second loan; which certainly rectifies the unintentional misrepresentation which the letter of the 29th had conveyed to the court of Directors; that letter being true to this extent—that it charged himself with the receipt of one of these two lacs, which the honourable Managers now charge him with having originally taken for his own use, and that he

Correction of the error in the letter of the 29th of November.

17 MAY 1793. had never intended to employ to the public service. On the 23rd of November, it appears, the sum of another lac had been paid from Nuddea: for that sum a further bond was taken.

So that now we have four bonds before us—the two for Dinagepore, one for Nuddea, and the one for the money which belonged to Mr. Hastings. Once for all, to disentangle this subject from a difficulty that may otherwise obscure it, it will be necessary for me to state what became of that fourth bond that belonged to Mr. Hastings. And here it is only necessary to refer your Lordships to Mr. Larkins' letter of the 5th of August, 1786, page 1153 of the printed Minutes, in which he distinctly explains the subject in this way:—the two first stated sums are asserted to have been paid to Mr. Crofts on the 1st and 2nd of November, 1780; yet the copy of the Bengal running treasury account, which is now in England, will not be found to contain any such sums as received from Mr. Hastings under these dates, because, these together with another sum of sicca rupees, one lac of which was taken from his own cash at that time, made up the first supply that was sent to the Mahratta army under Chimnagi Bosla. He then states that the sub-treasurer could not bring this to account until he was authorised by an express order of Council upon the treasury for that purpose, which was not granted till the 5th of January, 1781; after which, on the 15th of that month, the head of secret service money was debited for the amount of that supply, and the head of money borrowed at interest, in 1780, credited for these sums for which the bonds No. 1539, dated the 1st of October, 1780, and No. 1540, dated the 2nd of October, 1780—which your Lordships perceive are the two bonds for the Dinagepore money—each for the sum of one lac, current rupees, were granted. The remainder of that amount, which appears upon the consultation which I have just now read, was carried to the credit of the head of "four per cent. remittance loan;" Mr. Hastings having taken a bond, No. 89, which has been since completely liquidated conformably to the terms of that loan. Therefore, it appears here, from the evidence of Mr. Larkins, produced by the honourable Managers, that upon the 9th of January, 1781, Mr. Hastings took a bond, No. 89, in a distinct loan from that in which he took the two belonging to the Company, which bond, No. 89, the honourable Managers have traced in this way:—your Lordships will find, in page 1106 of the Minutes, there is this entry—

History of the fourth bond.

Sums received by Mr. Crofts.

Sums forwarded to the Mahratta army.

Three bonds granted for the amount.

"The Managers for the Commons informed the House they would next proceed to show that one third of the sum originally stated by Mr. Hastings to belong to the Company was actually paid to Mr. Hastings' attorney; that the bonds were turned into bills, and that they should now, therefore, produce the bills themselves. For which purpose they desired Mr. Parker might be called in." 17 MAY 1793.

Alleged conversion of the bonds into bills.

My Lords, from this entry your Lordships would undoubtedly collect that all these bonds, two of which I now admit belonged to the Company, were received by Mr. Hastings' attorney in England, in the shape of bills upon the Company; but, on referring to this evidence, it will distinctly appear that the bills in question were merely given for that bond which Mr. Crofts states in this account to have been the bond that belonged to Mr. Hastings, as distinguished from the two that belonged to the Company. So that, here again, the second act which Mr. Hastings does with respect to these bonds is expressly grounded upon a distinction between the property of the Company and his own, observing that distinction as it really existed; because he takes one bond for a lac which belonged to himself, which he remits to England and realises, while at the same time he retains in India the other two bonds which belonged to the Company. Having then traced the bond which belonged to Mr. Hastings, from the moment of its grant in India till the time of its receipt, the bonds in question are reduced to three—the two for Dinagepore and the one for Nuddea; all of which I admit distinctly to have been securities for money belonging, not to Mr. Hastings, but to the Company.

Only applies to Mr. Hastings' bond.

The question therefore is, what became of these bonds? Because, undoubtedly, if the honourable Managers can show that Mr. Hastings received any part of that property for which they were securities on his own behalf, then they will have succeeded in establishing the imputation of corruption against him. But if, on the other hand, he only received that bond which belonged to himself, and faithfully preserved, to be delivered up at a future opportunity, those which belonged to the Company, then the imputation falls to the ground. And I am taking all the pains in my power to make this part of the subject as perspicuous and plain as I can, because it has been one—I dare say unintentionally—but, certainly, hitherto involved in much obscurity. What then became of these three bonds which were given upon the 9th of January, 1781, and at a subsequent date in the month of February, for Dinagepore and Nuddea? It ap-

Disposal of the three remaining bonds.

17 MAY 1793. pears that these bonds continued from that time in the care and custody of Mr. Hastings; and that, though he disposed of his own by the remittance of it to England, he still kept these in India. It further appears that, though they were securities which bear interest from the moment of their being granted till a subsequent period, to which I shall presently draw your attention, in point of fact, Mr. Hastings never did receive even interest upon these bonds.

Account of the bonds subsequently given by Mr. Hastings.

Pursuing this subject further, your Lordships will find that, with respect to these bonds—with regard to one of which and meant to be with regard to both, the court of Directors had received information on the 29th of November, to this extent—to charge Mr. Hastings with so much money belonging to them in his hands—that information is afterwards distinctly given in a letter of the 22d of May, 1782; and that letter, which is addressed by Mr. Hastings to the court of Directors, purports to be a communication of different sums which he had from time to time privately received, but which he had uniformly applied to the public service, and, among other sums, the bonds in question. Your Lordships will find the entry of these bonds in the first article of the account, page 1115 of the printed Minutes, in these words:—

"The following sums were paid into the treasury, and bonds granted for the same in the name of the Governor General, in whose possession the bonds remain, with a declaration upon each, indorsed and signed by him, that he had no claim on the Company for the amount either of principle or interest."

And then follows a specification of the three bonds. The date of this account is the 22d of May, 1782. If, therefore, up to this period of time, no information whatever had been given to the court of Directors—the contrary to which I have, however, now clearly established—it is perfectly plain, at least, that, from the 22d of May, 1782, it is utterly impossible to state as against Mr. Hastings that he meant to convert these securities into money for his own advantage, when you find him expressly and in terms conveying information to the court of Directors that the bonds —describing them by their number—belonged to them. This happened on the 22d of May, 1782.

Upon this account, which appears to have been made up by Mr. Larkins from information given by Mr. Hastings and from papers in his possession, the honourable Manager who summed up this evidence has been pleased to make many

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observations. The first that occurs is this—that, though the entry purports to be of the 22d of May, 1782, and states the bonds then to be in the possession of Mr. Hastings, in fact, they were not in the possession of Mr. Hastings, because they appear to have been delivered into his possession by Mr. Larkins at a subsequent period. The fact, therefore, as stated in this entry, according to the honourable Manager, is untrue. The question will be, admitting the fact to be so, what inference results from it.

Misstatement imputed to Mr. Hastings.

I should apprehend that, if Mr. Hastings could at this time have had any intention whatever to mislead the court of Directors, he would have stated the fact directly another way. For, if the bonds had been in his possession, he would rather have stated them as out of his possession, for the purpose of proving that he had divested himself of the custody of them, that, in case of any accident happening to him, they might not become a charge upon the Company. So far, therefore, from its conducing to the purpose of Mr. Hastings, to state the fact contrary to the truth, in the way the honourable Manager supposes, if the fact had been consistent with the truth, it would have better answered his purpose to do directly the reverse!

Imputed misstatement respecting the endorsement of the bonds.

The second observation which the right honourable gentleman who summed up the evidence was pleased to make was this—that, though Mr. Hastings in this account distinctly asserts the bonds to have been in his possession and endorsed upon the 22d of May, yet that, in point of fact, it turns out from an affidavit of Mr. Larkins that they were not indorsed till a subsequent time; and from thence the honourable Manager again infers fraud upon the part of Mr. Hastings. And, my Lords, the affidavit on which the honourable Manager relies to substantiate this fact will be found in page 1117. In this Mr. Larkins states that—

Affidavit of Mr. Larkins.

"On or about the 29th of May, in the year 1782, he was present with and at the house of Mr. Hastings, when he, this deponent,"—that is, Mr. Larkins—"produced and delivered to the said Warren Hastings three several paper writings, or accountable receipts, on the account of the said united Company;"—

He then states that—

"He, this deponent, was at the time before mentioned present and did see Mr. Hastings write and indorse upon the back of each and every the said paper writings, 'I declare that I have no claim on the honourable Company for the amount of this bond, neither principal nor interest.'"

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Now I distinctly admit to the right honourable gentleman that, undoubtedly, from this affidavit these two facts appear: —first, that upon the 29th of May the bonds were in the custody of Mr. Larkins, not of Mr. Hastings; and, secondly, that they were indorsed, not upon the 22d, as the letter states, but upon the 29th. But I would be glad to know in what possible respect the honourable gentleman can prove this to be material to his purpose, that is, to fix upon Mr. Hastings from this fact alone a fraudulent intention to deceive the court of Directors?

Mr. Hastings' statement substantially correct.

Your Lordships will recollect that this was a letter addressed by Mr. Hastings to the court of Directors simply for this purpose—to prevent the bonds, in case of any accident happening to him, becoming a charge against them. All the purpose, therefore, that was intended by this letter, addressed from India to Europe, would be equally answered by indorsing the bonds upon the 22d or upon the 29th; because, whether they had been indorsed on the one day or on the other, the letter would be equally true at the time it arrived to the care and to the custody of the court of Directors. But, my Lords, the case in point of observation does not stop here: for your Lordships perceive that, though in fact the indorsement did not take place till seven days after, yet no circumstance can be more clear to show that, on the 22d, when Mr. Hastings stated the bonds to be indorsed, he meant forthwith to indorse them. When you find him doing it seven days after, upon the 29th instead of the 22d, I submit to the honourable Manager [that this], beyond all doubt, establishes an intention in the mind of Mr. Hastings to do that which he stated to have been done on the day of the date of the letter. And I apprehend that it is not extremely usual for any person, who is writing a letter asserting a fact, to stop in the middle of it merely for the sake of doing that which he states as being done; but the purposes of truth are fully and fairly answered if that which he states as being done, to the party whom he informs of the thing being done, is done at the moment when the letter comes to hand. But, going a little further, in another point of view, I shall be glad to know what advantage the right honourable Manager can possibly make of this circumstance; the charge against Mr. Hastings insisted upon by him being this—that there was a fraudulent intention with respect to these bonds, inasmuch as he did not indorse them upon the 22d but upon the 29th.

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My Lords, I go the length of distinctly stating that if, after Mr. Hastings had informed the court of Directors that these bonds were indorsed, and in his possession with that indorsement upon them, it had been utterly and altogether destitute of truth, and that from the date of that letter down to the hour when I am addressing your Lordships no indorsement whatever had been put upon the bonds, still that would have made no difference whatever in the case, for this plain reason;—the effect of an indorsement could only be to ascertain the property as belonging to the Company. That is all which an indorsement could have done if put upon the bonds on the 22d of May.

The statement in the letter to the Directors equivalent to an indorsement.

But I should be glad to know whether a letter, dated the 22d of May, stating these bonds to belong to the Company, did not in effect do all that an indorsement could have done, supposing that upon the 22d of May the bonds had been actually indorsed? If, therefore, from that hour down to this, as I before stated, the bonds had continued without any indorsement whatever, still all the effect of an indorsement would have been answered by that notice which the letter contained; unless, indeed, the honourable Manager can make a distinction of this sort—that a letter containing notice to the court of Directors that the bonds belonged to them and not to Mr. Hastings is different from an indorsement in that respect—that is, that the same words would mean different things as they might happen to be in the body of a letter or upon the back of a bond. A proposition which I do not believe that the ingenuity of the honourable Manager, however, undoubtedly, exceeding that of any other person, will be able to maintain. In substance, the representation of Mr. Hastings to the court of Directors is true. Take it either way, all the purposes of an indorsement on the 22d were answered by an indorsement upon the 29th; and, on the other hand, by a letter of the 22d the same purpose would be answered, supposing an indorsement never to have taken place. Therefore, in respect of this circumstance, I may humbly presume to hope that I have satisfied your Lordships that there could be no intention on the part of Mr. Hastings to be guilty of any fraud whatever.

Mr. Hastings' letter from Cheltenham.

But, my Lords, the honourable Managers go still further, for they have given in evidence a letter from Mr. Hastings to the court of Directors, which I believe your Lordships will find in the printed Minutes, page 1151, which is dated

17 MAY 1793. the 11th of July, 1785, and is the letter written from Cheltenham. On that letter I shall presently have some observations to make. At present I mention it only for the sake of pointing out this circumstance, namely, that in that letter Mr. Hastings informs the court of Directors that he had indorsed the bonds, at the time when he went up the country, to prevent their becoming a charge against them, in consequence of any accident to him. That is in the month of July, in the year 1781—a time when, undoubtedly, I admit the bonds had not been indorsed.

States the indorsement to have been made in July, 1781.

Absence of design in the error.

The first observation that I would humbly submit to your Lordships, with respect to that fact, is this;—that, in giving that information to the court of Directors in the year 1785, Mr. Hastings was speaking of a transaction which had happened four years ago, and describing an indorsement upon a bond, the bonds themselves not being actually before him, but at that time in India; so that it was extremely possible that the recollection of Mr. Hastings might, as, in fact, it did, mislead him with respect to this circumstance. It, however, appears that Mr. Hastings did that with respect to this transaction which, as with regard to the former, will also completely satisfy your Lordships that there could be no intent to mislead the court of Directors, and, through the evidence furnished to the court of Directors, also to mislead your Lordships; for it appears that, even during the course of this trial, when the question arose with respect to these bonds, Mr. Hastings himself wrote a letter to Mr. Larkins, in whose custody they then were, expressly desiring him to remit them to England, for the purpose of ascertaining whether or not, in point of fact, the indorsement was made upon the back of the bonds, as Mr. Hastings stated, in the month of July, in the year 1781.

I would, therefore, shape the argument in this way:—when Mr. Hastings asserted in the letter of 1785 that the bonds were indorsed in the year 1781, he knew the fact to be so, or he knew it to be otherwise. If at that time he was conscious that he had asserted to the court of Directors that which was untrue, it is utterly impossible to suppose that Mr. Hastings would have written to India to desire Mr. Larkins to transmit these bonds, merely for the purpose of convicting himself of an untruth; whereas your Lordships find that the very bonds which are now given in evidence by the honourable Managers, and which prove the indorse-

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The mistake immaterial.

ment not to have been in the month of July, in the year 1781, are upon your Lordships' table, in consequence of a tramsmission by Mr. Larkins, in conformity with the orders of Mr. Hastings. It seems, therefore, most clear that this was an unintentional mistake upon the part of Mr. Hastings, not material to the subject either way, as I shall show, but certainly an error and not designed; because it is quite impossible, if he knew the bonds to have been endorsed on the 29th of May, and not in the month of July, that he would have written to Mr. Larkins to produce those bonds to prove the contrary. That very circumstance, therefore, of an order to send the bonds to the court of Directors to prove the allegation in his letter, shows his consciousness of the truth of that allegation; because, take it the other way, it would follow that Mr. Hastings had asserted to the Directors that which he knew to be false, merely for the purpose of writing a letter to Mr. Larkins in order to produce his own letter and show its falsehood—a construction it is impossible to put upon the conduct of any man whatever.

Explanation by Mr. Hastings that he delivered the bonds to Mr. Larkins.

Having now made some remarks with respect to the observations made upon this letter of the 29th of May by the honourable Manager, it becomes necessary to trace what afterwards became of these bonds. And your Lordships will find that, upon the discovery of this error in the indorsement, Mr. Hastings, acknowledging it at your Lordships' bar, states that, if he could hazard any further supposition upon the subject after having been so much deceived already, he should imagine that, in fact, he had delivered them to Mr. Larkins when he went up the country in the year 1781, and that he had, as he well might do, confounded that fact with the subsequent indorsement upon them. The question, therefore is—whether it can be made out in any way whatever that that which Mr. Hastings has stated at this bar to be his supposition is the fact, and that the bonds were delivered to Mr. Larkins at the time when, in July, 1781, Mr. Hastings went up the country. And, my Lords, I think that, though there is no express assertion to this effect in the letter of Mr. Larkins, because the question was not put to him nor could be put to him, Mr. Hastings believing what he then did, yet, from comparing the circumstances which are mentioned in that letter, it will be perfectly clear that, in point of fact, Mr. Hastings did divest himself of the custody of these bonds and lodge them with Mr. Larkins

Mr. Larkins' evidence.

17 May 1793. before he went up the country, in the month of July, in the year 1781. And, my Lords, the manner in which I establish that fact is this.

In the letter from Mr. Larkins to the court of Directors, dated the 5th of August, 1786, page 1157 of the Evidence, Mr. Larkins states thus:—

> "Mr. Hastings returned from Benares to Calcutta on the 5th of February, 1782. At that time I was wholly ignorant of the letter which, on the 20th of January, he wrote from Patna to the Secret Committee of the court of Directors. A rough draft of this letter, in the handwriting of Major Palmer, is now in my possession. Soon after his arrival at the Presidency, he requested me to form the account of his receipts and disbursements, which you will find journalised in pages 280 and 307 of the Company's general books of the year 1782; and which account has since been given in evidence by the proper officer, in order to show the application of the present receipt from the Vizier to the public service.

Mr. Larkins then states, that his official situation as accountant general had previously convinced him that Mr. Hastings could not have made the issues which were acknowledged as received from him by the agents of some of the paymasters of the army, unlesss he had obtained some such supply as that which he afterwards, namely, on the 22d of May, 1782, made known to him. On the 20th of January, Mr. Hastings had written from Patna to the court of Directors, giving them information of the present from the Wazir; but it appears that he did not return to Calcutta till the 5th of February, 1782, and that he had no conversation whatever with respect to the 100,000*l.* with Mr. Larkins till the 22d of May, 1782, when this account was made up.

Proofs of the delivery of the bonds to Mr. Larkins.

The first thing, therefore, to establish is this:—that, in point of fact, no conversation whatever had happened between Mr. Larkins and Mr. Hastings, with respect to the present from the Wazir, from the day of the return of Mr. Hastings, on the 5th of February, 1782, till the day when he afterwards disclosed it to Mr. Larkins, that was upon the 22d of May. I have stated that, at this time, that is, on the 20th of January, he had informed the court of Directors of the receipt of this money. There could, therefore, exist no reason why he should conceal the knowledge of it from Mr. Larkins, with whom he was in the habit of communicating, as accountant general to the Company, upon these subjects, he having before disclosed that in that letter of the 20th of January. And, therefore, when I find that no conversation happened with respect to the 100,000*l.* between the time of the return of Mr. Hastings and the 22d of May,

the inference necessarily follows, in point of fair argument, that there had been no conversation whatever between them as to any other sum; because it would be absurd to suppose that Mr. Hastings, who communicated all those circumstances to Mr. Larkins, could be talking to him with respect to a sum of 25,000*l.*, and yet that he could be silent with respect to a sum of 100,000*l.*, of which it is plain he meant to inform him, because he afterwards did inform him. And when your Lordships accurately examine the letter, in order to see whether it bears the construction I am now putting upon it, you will feel yourselves bound unavoidably to adopt the same conclusion. Then it follows that there had been no conversation from the time of the return of Mr. Hastings till the 22d of May. 17 May 1793.

If I find that upon the 29th of May the bonds are in possession of Mr. Larkins, these bonds must have been delivered before Mr. Hastings went up the country—which is the fact to be established—unless they can show that the bonds were delivered between the 22d and the 29th of May, the day on which they were endorsed. And, with respect to the latter supposition, your Lordships perceive it is utterly impossible; because when, upon the 22d of May, the fact to be stated to the Directors was, the bonds being in possession of Mr. Hastings, with the indorsement upon them, and afterwards, upon the 29th, Mr. Larkins delivers them for that purpose, it is impossible Mr. Hastings could have delivered them out of his custody upon the 22d of May, when, on the contrary, he wanted to have them in his custody for the very purpose of indorsing them. Therefore, they must have been delivered by Mr. Hastings to Mr. Larkins before he went up the country; unless the honourable Managers could show that, for which there is no ground or colour whatever, that, while Mr. Hastings was up the country, having taken these bonds with him, he sent them down to Mr. Larkins; which supposition the case will by no means afford.

The result, therefore, from a candid comparison of these circumstances, undoubtedly is, that these bonds had been, as Mr. Hastings supposes, delivered by himself to Mr. Larkins in July, whan he went up the country, and though they were not actually indorsed, yet they were put out of his custody at that period; which fact, as he truly states, at the distance of four years, when writing an account of these transactions, he had confounded with the indorsements

17 MAY 1793. which afterwards took place. Thus much, then, with respect to all the circumstances which, down to this period of time, have happened to the bonds in question. I have shown a full communication on the 29th of November with respect to one, and an instant application of both to the public service; and, finally, I will draw your Lordships' attention to the consultation of the 17th of January, 1785, page 1150, in which your Lordships will find that these three bonds, without any interest having been received upon them, are actually delivered up by Mr. Hastings, prior to his departure from Calcutta. So that it appears, tracing them through their progress from the time when the money was first received, that these facts are clearly established:—

Recapitulation.

First, that the sum itself, that is, the money from Dinagepore, never was in the possession of Mr. Hastings.

Secondly, that, immediately upon its receipt by Mr. Crofts, it was applied to the puplic service.

Thirdly, that these bonds, which continued in his custody so long, in no respect whatever conduced to his advantage.

Therefore, with regard to this sum, nothing can be more clearly established than that, even if these bonds were in charge —which they are not—it appears from all the evidence that this sum was faithfully appropriated to the public service. I have now, therefore, stated in what this supposed falsification of the letter of the 29th of November, 1780, consists; and I have shown that the falsification supposed to exist by the right honourable Manager has no foundation whatever.

I now come to that which is next the subject of the Charge. Your Lordships will find that the next transaction imputed to Mr. Hastings is the receipt of a sum of money sometime in the month of October, in the year 1780. Your Lordships, however, will observe, before I come to this part of the case, that I have now disposed of the two sums that were taken from Raja Cheyt Sing and from Dinagepore. I have shown that, with respect to the first, it was taken by Mr. Hastings to be applied to the expenses of Colonel Camac's detachment, which expenses Mr. Francis and Mr. Wheler had declared the Government to be unable to bear; and I have shown that, with regard to the second, it was delivered to the minister of the Raja of Berar, for the purpose of detaching him from the great confederacy, and from a foe converting him into a friend.

Advantageous results of the mea-

Before I quit this part of the subject, I will take the liberty shortly to state what was the result of both these

measures; and from that result it will clearly appear that the very circumstances which are now imputed as crimes to Mr. Hastings were those, beyond all others, which peculiarly and essentially contributed to the preservation of India at the time.

17 MAY 1793. — sures pursued by Mr. Hastings.

The first document to which I will beg leave to refer your Lordships, upon this subject, relates to the sum of two lacs that were taken from Raja Cheyt Sing; and, in order to show what was the effect of the appropriation of this money to the public service, which Mr. Hastings is stated to have taken and converted to his own use, it becomes only necessary to refer your Lordships to a passage from a paper which has already been produced in evidence by the honourable Managers themselves. The paper to which I allude is Kirkpatrick's View of India, which your Lordships will find read by the prosecutors in the Appendix to the printed Evidence, No. 62, p. 258. And, talking of this transaction, he expresses himself thus:—

Kirkpatrick's View of India.

"It is observable, notwithstanding what has been said respecting the generosity of Mhadajee Scindia in the affair of Worgaum and his early desire to cultivate our friendship, that our Government does not appear to have manifested any strong sense of obligations to that chief or inclination to meet his wishes, till the time when he negociated the treaty at present subsisting between us and the Maratta state. Prior to this period he was, perhaps, of all his countrymen, the one who suffered most from our arms during the course of the war. He it was who was chiefly harassed by the operations of General Goddard's army, and Colonel Camac's detachment was specially destined against his country."

That detachment, for the extraordinary expenses of which this sum was corruptly, according to the honourable Managers, taken by Mr. Hastings, and to which expenses I have shown it to have been applied. What was the consequence, in point of benefit to the public, of that measure which, in opposition to the sense of Mr. Wheler and Mr. Francis, Mr. Hastings alone adopted?—

Peace concluded with Madaji Scindia.

Our present connection with Madajee Scindia is one of the fruits of this last measure, which it was foreseen would certainly disengage him from the war in Guzerat. It was also, or at least it might have been, foreseen, that it was no less calculated to bring about a peace between us and the Mahrattas. The operations of our troops in Malway convinced Madajee Scindia that there was no safety for him but in a speedy accommodation; and, fortunately, he possessed the power as well as the inclination to accomplish an object that could not be less desirable or necessary to him than it was to us."

Here then it is distinctly proved, according to the prediction of Mr. Hastings in the very minute of the 12th of

17 May 1793. June, when he brought forward this measure, that the drawing off the attention of Madaji Scindia from Guzerat would make him a suitor for a separate peace, and that a separate peace with Madaji Scindia would bring about a pacification with the Mahrattas. I therefore stated, that the idea of the receipt of the two lacs of rupees which suggested itself to Mr. Hastings was that which contributed to bringing forward, in the first instance, a peace with Madaji Scindia, and, afterwards, through his means, a general peace with all the Mahratta powers, and thereby saving the possessions in India.

Having thus disposed of one of the measures to which the sum taken from Cheyt Sing applies, it becomes only necessary now to trace the effect of the other. And your Lordships here will find that, in a letter addressed to the court of Directors from the Board on the 27th of April, 1781, an account is distinctly given of the effect of the three lacs of rupees delivered to the Raja of Berar from Mr. Hastings on the 16th of October, in which they say:—

Good effects of the present to the Raja of Berar.

"We shall briefly observe that we have laboured, and we think with success [now decided, to detach the most powerful member of the Maratta state, and, in its relation to Bengal, the most capable of any in India to do it either service or hurt, from the general confederacy which has been formed against us, and have converted it, ostensibly at least into a] party to our cause. During the course of this transaction, the detachment under the command of Colonel Pearce proceeded [by a quiet and unmolested progress to Ganjain, where it arrived on the 17th ult., accompanied to the borders of that district by a person of rank, deputed by the order of Raja Chimnagee, and abundantly supplied] with provisions and every other aid."*

This detachment under Colonel Pearce, which was suffered, in consequence of these three lacs, to march unmolested through the territories of the Raja of Berar, was that detachment of 5,000 men which, after a march of 900 miles through part of this country, arrived just in time to support Sir Eyre Coote in that action—upon which their preservation depended—that he had with Hyder Ali. So that, here again, the effect of the three lacs of rupees, as in the former instance, appears, first, to have been to detach Mudaji Bosla from the great confederacy to which before he belonged, and to induce him, not only to permit the march of Colonel Pearce's detachment to the relief of the Carnatic, but actually to furnish it with provisions and assistance on its way.

Importance of Col. Pearce's junction with Sir Eyre Coote.

* Printed in the "Minutes of the Evidence," p. 2152.

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These were the two measures on which the mind of Mr. Hastings was intent at the time when these sums were received, and to which they were appropriated. And when your Lordships find that such were the beneficial consequences to the public, predicted at the moment of the receipt of the money in each instance by Mr. Hastings, I put it to the honour of every noble Lord to declare, whether they could conceive that his mind, filled with these great projects of public benefit, could be meanly stooping to any base considerations of personal interest in the conduct which he did adopt? I have shown that both these measures were suggested by him; that the idea of them led to the receipts in question; and that, ultimately, the sum taken was so appropriated and produced these advantages. Your Lordships will see, upon the whole consideration of this part of the case, whether the honourable Managers have been extremely successful in establishing that which it is incumbent upon them to establish—not the fact, which never was denied by Mr. Hastings, which so far from being denied by Mr. Hastings, all the evidence they have is what he has himself furnished them with, namely, the receipt of the money—but whether they have established the corrupt intention, in respect of which they allege the act to be criminal—namely, that it was not a receipt for the benefit of the Company nor appropriated for the public service, but originally taken and ultimately applied to his own use and benefit.

Bribe from Kelleram.

The next subject which occurs in the order of the Charge is a sum of money stated to have been taken in the year 1780. And, with respect to that, the Charge alleges this—

"That the said Warren Hastings did, on or about the month of October, in the year 1780, take and receive from a certain person called Kelleram, since appointed by the said Warren Hastings renter of the province of Bahar, on behalf of himself, the said Kelleram, and a certain person called Cullian Sing, a sum of money amounting to four lacks of rupees, equal in value to 40,000*l.* sterling, in consideration of which the said Warren Hastings did, contrary to his duty, and to the great injury of the interests of the said East India Company and the British nation, let certain lands in the province of Berar in perpetuity to Kelleram and Cullian Sing, or one of them."

Alleged grant of a lease.

This part of the Charge contains, therefore, as your Lordships perceive, two distinct allegations. The first is—the receipt of a sum of money by Mr. Hastings from Kelleram. The second is—that, in consideration of that sum, he let

17 MAY 1793. certain lands in perpetuity; the injurious letting being stated to consist in the perpetuity which is alleged.

With respect to this part of the case I shall not trouble your Lordships with many observations, because it does not seem to me to be extremely material; for whether it were let upon a long or whether it was let upon a short lease, whether it were let upon one that was renewable or one that was perpetual, I cannot conceive to have any consequence whatever in the investigation of this subject. Your Lordships will find that the honourable Managers have, however, made the injury consist in these two distinct respects:

Duration and terms of the lease.

—in the first place, in the duration of the lease, which is correctly the idea which the Charge bears; and, in the second place, in the terms upon which in point of interest the lease was made. And, my Lords, they have stated that, at the very time when Mr. Hastings let these lands to Kelleram and Cullian Sing, they had been let upon terms equally advantageous by the provincial Council at Patna; from which they infer that he would not have let them upon terms merely as advantageous, unless it was for the purpose to receive, in the shape of a bribe, something for his own use and benefit.

The first fact, therefore, for the honourable Managers to establish is this;—that at this time Mr. Hastings did let them upon terms not more advantageous than the provincial Council. And, though this is the foundation of their Charge, in this particular, your Lordships will find, on recurring to the evidence, that the direct reverse is established by all the proofs which they themselves have produced. Your Lordships will find, upon turning to page 1203, that, Raja Kelleram having come down from Patna to Calcutta, for the purpose of making certain proposals to the Board with respect to renting the province of Behar, Mr. Hastings, in common with the other members of the Council, did what it became him to do. It was not to be supposed that the Governor General of Bengal, amidst all the multiplicity of his numerous and great avocations, could investigate the terms of all the different leases that might be laid before the Board; but upon this occasion he did what was usual. The Board came to a resolution that it should be referred to the secretary, in order to compare the proposals of Kelleram with the terms that had been settled by the provincial Council; and, in page 1203, your Lordships will find that the secretary, to whom this was referred, asserts to the

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Board, that the proposals made by Kelleram will be better by nearly two lacs than the settlement which was proposed to be made by the provincial Council. Therefore, the assertion upon which the honourable Managers depend, that the provincial Council had let them upon terms as advantageous, altogether fails; because, instead of being as advantageous, it appears, upon the report of the secretary, that, independent of the four lacs that were to be received, there was an obvious and apparent difference of two lacs in favour of Kelleram's proposals, comparing the one with the other.

Additional sum of four lacs received by Mr. Hastings on behalf of the Company.

But, my Lords, that was not all; because it appears that Mr. Hastings was to receive—supposing it to have been paid — a further sum of four lacs. If, therefore, I can show — as undoubtedly I shall — that that sum of four lacs was by him received on behalf of the public, and to the public use applied, it will then follow that the four must be added to the two, and the proposals of Kelleram were not more advantageous by two than the provincial Council, but that, in effect, the Company would have acquired an increase of six lacs of rupees. It seems, therefore, to me that, upon the mere consideration of an injurious letting, it is hardly to be contended by the honourable Managers that the conduct of Mr. Hastings was censurable in this respect.

Long leases recommended by Mr. Young.

As to the perpetuity, which is the only distinct allegation upon the face of the Charge, the letting being stated to be injurious in this respect, upon turning to the printed Evidence, page 1219, your Lordships will find that the witness called by the honourable Managers, Mr. Young, who was one of the provincial Council at Patna at the time, proves distinctly these two things;—first, that a letting to one man would be more advantageous than a letting to many, supposing him a proper person; secondly, that, in such a case, a long lease would be more advantageous than a short one. We have, therefore, here, in opposition to the Charge, the evidence of the very witness called to support it, that the length of the lease would of itself be a circumstance of advantage to the Company; whereas the perpetuity of the lease is the offence which by the honourable Managers is imputed to Mr. Hastings!

Character of Kelleram.

My Lords, I am aware it may be said that Mr. Young in this evidence states that it would be more advantageous, supposing the person to be a proper one. And it is undoubtedly true that the honourable Managers did offer

17 MAY 1793. evidence to show what they conceived to be the unfitness of Kelleram. I wish not to misstate the course which they took in that respect, but, this unfitness being no part of the allegation upon the Charge, your Lordships determined to reject that evidence. Whether, therefore, Kelleram was a proper or an improper person, undoubtedly I am not at liberty at the present moment to discuss; that discussion having been prevented being gone into on the part of the honourable Managers, when they offered evidence for the purpose. But this I may state—that, inasmuch as without any evidence it cannot appear whether he was proper or improper, surely I have a right to rely upon that common presumption in favour of the act of every public Board, that they would not have made a lease to a person who was in their estimation improper. Whether, therefore, he is proper or not, is not the point in dispute; but, supposing him to be proper—and the contrary is not alleged—then I have the authority of the honourable Manager's witness for saying that a long lease is better than a short one. But, upon referring to this lease which is stated to be thus injurious to the Company, your Lordships will find that the perpetuity in question depended upon these three things:—first, that he should be punctual in his payments; secondly, that he should conduct himself well towards the ryots; thirdly, that there should be no claim of any deduction.

The perpetuity of the lease conditional on good conduct.

So that this lease, in effect, contains the only covenant that was of importance; that is, that, in case of any oppression whatever committed by this man, instead of his lease being perpetual, it was that moment to be put an end to. I, therefore, shall submit to your Lordships that, with respect to this part of the Charge, it is completely disproved by all the evidence which the honourable Managers themselves have brought forward.

The sum of four lacs alleged by Mr. Hastings to have been received as a peshkush.

The only remaining part of the Charge, therefore, is the sum of four lacs of rupees, which is stated to have been taken by Mr. Hastings as a consideration for letting these lands. The history of the transaction, as stated by Mr. Hastings, is this:—that the sum in question was what in India is termed a peshkush, that is, a payment in the nature of a fine upon the making of a lease. On the contrary, the honourable Managers insist that that cannot be; and, for the purpose of disproving it, they have given

evidence, which your Lordships will find in the printed Minutes, page 1208. 17 May 1793.

The evidence in question consists in two documents; the one being an extract of a letter from the Governor General and Council at Fort William to the court of Directors, dated the 25th of February, 1775, and the other being a letter dated the 8th of February, 1775. Evidence to the contrary adduced by the Managers.

In the letter of the 8th of February, 1775, there is this entry—

"Considering most of the disputed claims of inheritance to have arisen from the proprietors neglecting to make out sunnuds for their zemindaries, we have thought it necessary to remove the objections which may have prevented the zemindars and others from establishing their rights by such authentic grants, in exempting them from the heavy impositions of peshcush on the renewal of every sunnud and reducing it to a fixed payment."

It is, therefore, clear that the peshkush, which is stated in this consultation and on which the honourable Managers rely, was in its nature a payment entirely distinct from that which Mr. Hastings received in the instance of Kelleram; because it was to be a fixed payment in the case of pre-existing right, and where a sanad was to be obtained as the evidence of that right. Therefore the court direct that those persons who are desirous to establish their rights to the land which they hold—a right to the lands which Kelleram could not be said to have to the province of Behar, which he was applying to have by lease—that they should be exempt from peshkush or any charge whatever.

It, therefore, appears that the evidence produced by the honourable Managers has no relation whatever to the subject, because it only applies to the case of a sanad taken as a deed to authenticate an existing right; whereas this was the instance of a man who had no right to the thing he applied to have on lease, and, consequently, whose case did not fall within this regulation. But to show your Lordships that there is no foundation for this assertion of the honourable Managers—that a peshkush is always a fixed and certain payment—I will only beg leave shortly to refer your Lordships to page 1192 of the printed Evidence, where they have themselves given proof of a sum of money which was offered as a peshkush in a case precisely similar to this, where land was to be granted for the first time, and where the peshkush, instead of being a fixed and certain payment, bore a proportion to the annual rent of the land, in the same manner that the rent in question bore a proportion to the value of

17 MAY 1793 the land in the province of Behar, which was, for the first time, to be let to Kelleram and Cullian Sing. Therefore, it seems that I have disposed of the application of the evidence, as far as it grows out of the subject of peshkush as applying to this Charge, and being in no respect contradicted by the evidence produced by the honourable Managers, but, on the contrary, confirmed by the testimony that there does by custom, in India, exist such a thing as a peshkush or fine, in the case of the grant of land for the first time, and that the extent of it depends upon the annual rent or produce of the land. This sum, therefore, being taken by Mr. Hastings in the manner that he has described, it becomes necessary to trace what afterwards became of it. And, my Lords, you will find, on referring to page 1115 of the printed Minutes, this entry. Before I come to it, however, I will state to your Lordships that of course the present purpose that I have to establish is to show that, in this instance, as in the former, the sum of two lacs and 30,000 rupees, which as a part payment of four lacs were received by Mr. Hastings from Kelleram, were faithfully appropriated to the public service. And, in order to establish that, I beg leave to draw your Lordships' atttention to another entry in the account, which will be found in the letter of the 22nd of May, 1782, to which I have before had occasion to refer the Court. That entry is—

The peshkush applied to the public service.

"Paid into the public treasury, and credited in the 637 page of the Company's general journal as money received from the Governor General on account of durbar charges."

Your Lordships will have the goodness to bear in your mind the date, which is the 30th of April, 1781, when the money appears to have been paid into the public treasury and credited in the Company's books. So far, therefore, we get, that there is, at this moment, by the proper officer, who has attended your Lordships, a complete proof of this fact, namely, that on the 30th of April, 1781, the sum of two lacs and 32,000 rupees received from Kelleram and Cullian Sing had been paid into the public treasury. The Company had credit for it from the Governor General on account of durbar charges. This subject is further explained in the letter of Mr. Crofts of the 5th of August, in which he states that a fifth sum, mentioned in Mr. Larkins' account, which is the sum in question, is the amount of payment stated by paper, No. 1, to be made to Mr. Crofts. Now that is entered under the 26th of April, 1781; and, as it will be found to

17 May 1793.

Time occupied by the payment.

have been mostly made in silver, it must have taken up more than one day to count, as the [clerks] at the treasury can seldom count more than one lac of sicca rupees in a day. Of course, the whole payment was brought to account on the date on which it was completely made. So that, here again, in this instance, precisely and to the full effect as in the former, it appears from the evidence produced by the honourable Managers that the money which Mr. Hastings received in the form of a peshkush from Kelleram and Cullian Sing began in point of payment on the 26th of April, and being made in silver it could not be completed till the 30th of April; and your Lordships will find that, upon the 30th of April—the very day in which Mr. Larkins states the payment completed—on the 30th of April, 1781, the whole is paid into the Company's treasury and they have credit for it there.

So that, here again, this sum was not for a single instant of time in possession of Mr. Hastings, but passed through the hands of Mr. Crofts, being deposited in the public treasury the moment that the payment was complete. In opposition to all this, on what circumstance is it that the honourable Managers rely, to induce your Lordships to believe that a sum of money which was never for a moment in the possession of Mr. Hastings—which, the very instant that the payment was made, was lodged in the public treasury—was a sum, contrary to this fact, taken by him for his own use and benefit? The only evidence on which they reply is this:—they state distinctly that Mr. Hastings never did mean to appropriate this sum to the public service, though I have now shown that the very moment the payment was made it was lodged in the public treasury. And the way which they made it out is this: they have called a witness, who has proved that, before Kelleram went down to Calcutta, there was a rumour which generally prevailed that Mr. Hastings was to receive the sum of four lacs for the letting of this land. The witness of whom I speak was Mr. Young. Undoubtedly he proves distinctly the existence of this rumour at Patna; and I admit that he proves as distinctly the existence of the rumour at Calcutta; and it would not at all follow, as far as that evidence goes, that a rumour of this sort had reached the ear of Mr. Hastings; because it was not extremely probable that it was a sort of conversation, if supposed to be injurious to him, that any person would be extremely fond of repeating in his presence. However, it

Alleged influence of rumours of intended appropiation of the money.

Evidence of Mr. Young.

7 MAY 1793. does appear that Mr David Anderson, who about the same time had heard a similar report, conceiving that this report applied to the conduct of Mr. Hastings, as if the money was taken for himself and not for the Company, and feeling that such conduct would have been utterly inconsistent with the whole tenor of the life and behaviour of Mr. Hastings—Mr. Anderson did that which, as a friend and a man of honour, it was incumbent upon him to do:—he waited upon Mr. Hastings and informed him of the prevalence of such a report. And here it is necessary for your Lordships to see at what precise time it was that Mr. Hastings first acquired the knowledge of this rumour, in consequence of which he is said to have given to the Company what he originally meant for himself, as conveyed to him through the mouth of Mr. Anderson.

Your Lordships will find, in page 1221, that Mr. Anderson states this;—that he heard it in the beginning of the year 1781; that he had a conversation with Mr. Hastings in May; that in the course of that conversation he related the report. He says,—

"Mr. Hastings told me to make myself easy; whatever money had been received was accounted for to the Company."

Now was that true or was it false? The very first time that Mr. Hastings hears of this rumour is in the beginning of the month of May; he then informs Mr. Anderson that he may make himself easy, for whatever he has received has been paid into the public treasury. Was it so? I have proved the fact by the very account to which I am now drawing your attention—namely, that the payment took place upon the 30th of April, which was prior to the conversation with Mr. Anderson; and yet, according to the honourable Managers, that rumour, which for the first time was conveyed to the ears of Mr. Hastings subsequent to the payment into the public treasury, was the cause from which a disclosure of that receipt on the part of Mr. Hastings proceeded! It seems to me, therefore, that nothing can be more clear than that this circumstance, instead of making against the cause of Mr. Hastings, strongly supports the consistency and integrity of his character and conduct; because, in the only instance in which you find a rumour of this sort prevailing and communicated to him, it appears that his conduct was not in consequence of the rumour, but that the appropriation to the public preceded the communication to him.

The money already paid to the account of the Company.

I will suppose, for the sake of argument—if the honourable

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Manager chooses to suggest it—that Mr. Hastings had, in some way or other—though of that there is no proof nor any probability—been informed of this report prior to the conversation with Mr. Anderson, in the beginning of May. How then would the case stand? Would your Lordships upon that ground, in opposition to the fact I have stated, be induced to conclude that the mere cause that led Mr. Hastings to disclose the receipt of this sum was a knowledge that the rumour of it was circulating through the public, and, consequently, that the fact might some way or other be established against him?

Argument from the previous conduct of Mr. Hastings.

The first question that occurs, in point of reason and fairness, is,—whether this is in any respect whatever consistent with the past conduct of Mr. Hastings.

Now, when your Lordships perceive, prior to this very time, that is, in the instance of Cheyt Sing, in the instance of the two lacs from Dinagepore, in the instance of the one lac from Nuddea, amounting altogether to five lacs, and in respect of which the honourable Managers have not pretended that the faintest whisper circulated in any part of the settlement—when you find Mr. Hastings without any rumour disclosing those several sums, I ask, upon what ground of reason or justice it is that you would impute to rumour the disclosure of this sum from Kelleram? Or does not the direct contrary conclusion fairly result, namely, that [as] it found him appropriating to the public service four several sums of money, with respect to which, according to the honourable Manager, there was no rumour, he would have acted precisely in the same way with respect to the five, supposing no rumour had prevailed with regard to them? Taking it either way, the rumour did not reach Mr. Hastings till subsequent to the payment into the treasury, which was made the moment the money was received. It would then follow, if it had reached his ears before, that he had acted in every respect inconsistently with himself; because, having paid the four, it would follow in fair inference he did not mean to retain the fifth.

My Lords, I apprehend I have, therefore, now given a complete and satisfactory answer. And your Lordships will upon these facts put the question to your own consciences, whether, when it is established, not by proof produced by us in opposition to evidence on the other side, but by evidence produced by them, the evidence running all one way, that this was paid into the public treasury at the time it was

17 MAY 1793. received, and thence appropriated in various ways to the public service, upon what ground can the honourable Managers now insinuate that this was a sum taken by Mr. Hastings for his own use and benefit? Thus much, therefore, with respect to the four lacs of rupees stated to have been received by Mr. Hastings from Kelleram; in which it appears, however, that the sum only of two lacs and 32,000 rupees was received, which sum is credited in the public account.

Present of 100,000*l.* from the Nawab of Oude.

The next transaction which in the order of time occurs, in the course of the Charge, is that which relates to the gift or present, as it is stated in this Charge, of 100,000*l.*, said to have been taken from the Nawab; and, with regard to that, the honourable Managers state it in this way:—

"That Azoph ul Dowlah, Nabob of Oude, or Vizier of the empire, was in the month of February, in the year 1780, and from that time until the period herein-after mentioned, in a state of great pecuniary distress and embarrassment; that the condition of the finances of the said Vizier was well known to the said Warren Hastings, as well at the time herein-before mentioned as in the period herein-after next set forth; and that the said Vizier was at these times greatly indebted to the East India Company.

"That, on or about the month of September, 1781, at Chunar in the province of Oude, the said Warren Hastings did, contrary to his duty, and to the great distress and additional embarrassment of the said Vizier, take and receive as a present or gift from him, the said Vizier, the sum of ten lacks of rupees, equal in value to 100,000*l.*, or some other large sums of money."

With respect to the Charge, as it is here framed, your Lordships will perceive that the sum in question is stated as a gift or present. I have not, therefore, to embarrass myself with the discussion of that allegation which occurred in the course of a former Charge, and which has already been so fully and ably examined by my learned friend who preceded me upon a former occasion, where the very same sum is stated in aggravation of the conduct of Mr. Hastings—in the Charge with respect to the Begums—to have been taken as a bribe for the execution of the treaty of Chunar.

Stated as a bribe.

Obliged therefore, painfully to myself and I am afraid to your Lordships, to trespass more upon your time than I would willingly do, I shall not waste more of your time than is necessary by repeating any of the observations which have been made by my learned friend already in that behalf. As far as it is stated to be a bribe in the second Article, I shall refer the answer to what he has already urged.

The part that is incumbent upon me to examine is, as it is stated, upon the sixth Article of the Charge. And here, without being coupled with any one circumstance of corruption which would change it from a mere present into a bribe, your Lordships will find it is represented merely as a present, on the ground of its being a transaction in that respect illegal and contrary to the Act of Parliament. With respect to those facts with which the relation of the main circumstance is attended, I shall take the liberty, in order to make the investigation of the subject as clear as possible, to disembarras it from them, by stating to your Lordships what I admit and what I deny. In the first place, I have no difficulty in admitting that, at this time, the Nawab was in a state of great pecuniary distress. I have as little difficulty in admitting that the condition of the finances of the said Wazir was well known to Mr. Hastings; and, I equally admit that the Wazir was at this time greatly indebted to the Company. But, if the Wazir was in distress, surely the honourable Managers will not deny to me that, at this time, the Company were reduced to the last extremity of distress —exhausted of treasures and men by all the supplies that had been sent to the Carnatic; and if, therefore, Mr. Hastings had only to consider whether he should relieve the distress of the Company by increasing that of the Nawab, or whether he should suffer the distress of the Nawab to continue and that of the Company, without relieving either, it seems he could not hesitate a moment between the two, and that, even if he did increase the distress of the Nawab, yet if it essentially contributed to the advancement of the interests of the Company, it became him, upon a comparison of the two, to adopt that which was the most proper measure—namely, to take from the Nawab a sum that would relieve the distresses of the Company, even though for a time it increased his own. It does not, therefore, seem to me that that can be urged as a circumstance of aggravation, in any respect whatever.

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Distress of the Nawab, and of the Company.

With regard to the fact itself upon which the whole of this Charge depends, that is, the receipt of the ten lacs of rupees, here again it is not in dispute between us. For your Lordships know that the only evidence of which, at this moment, you are in possession is the account given of this transaction by Mr. Hastings himself, in the case of a sum in respect of which the honourable Manager will not pretend that any rumour prevailed, but notwithstanding

Receipt of the sum disclosed by Mr. Hastings.

17 MAY 1793. which Mr. Hastings, in the first instance, came forward and charged himself with the receipt of so much from the Nawab. The fact, therefore, of the receipt of money stands proved by the admission of Mr. Hastings—not detected in any other way. And I would beg your Lordships to observe, that the account of the transaction to which I am now about to draw your attention was consequently given by Mr. Hastings, not as an account after discovery to palliate his own conduct, but as an account to explain a discovery which it was not incumbent upon him to make, unless he had meant fairly and uprightly with respect to his conduct.

His letter to the Directors, Jan. 20th, 1782.

The first intelligence received of this was given in a letter, dated Patna, the 20th of January, 1782, which is in the printed Minutes, page 1112. This letter was addressed by Mr. Hastings to the court of Directors; and the purport of the letter, as it will presently appear, was to convey to the court of Directors information of the receipt of this sum. Before, however, I read this letter to your Lordships, it is necessary to advert to the time when this sum is said to have been taken, namely, in the month of September, when the Nawab was at Chunar. From the month of September, therefore, to the month of January, a period of three months had elapsed, during which, undoubtedly, it becomes incumbent upon me hereafter to examine and to account for the conduct of Mr. Hastings. But, my Lords, it also appears, that Mr. Larkins, who was accountant general to the Company, states in the letter of the month of August, 1786, which I have read, that he had, before any information whatever had been given of this transaction, on the 20th of January, 1782, discovered, by the issues to the different paymasters, that Mr. Hastings must have received some such extraordinary supply.

Intimation of the receipt of money through the medium of his payment.

Here, then, the first discovery that we have of the transaction in question is made by the accountant general to the Company, without the communication of Mr. Hastings, traced by him as an issue to the different paymasters—that is, an appropriation of it to the public use by Mr. Hastings, in the manner in which the service was most materially to be advanced. This is a discovery of the sum made by the officer who was employed on the part of the public, with respect to the application of this money, even before Mr. Hastings himself had revealed it.

Mr. Hastings' account of the transaction.

In this letter, Mr. Hastings states that—

"While the Nabob Vizier was at Chunar, an offer of a very con-

siderable sum of money was made to me, both on his part and that of his ministers, as a present. I accepted it without hesitation, and gladly, being entirely destitute both of means and credit, whether for your service or the relief of my own necessities. This donation was not made in specie but in bills, which have been in part only and tardily realized, being drawn on the house of Gopaul Doss, who was at the time a prisoner in the hands of Cheit Sing. The remainder is in course of payment, and I make no doubt of its being paid. What I have received has been laid out in the public service; the rest shall be applied to the same account. The nominal sum is ten lacks of rupees of the currency of Oude. As soon as the whole is completed I will transmit to you a faithful account of it, resigning the disposal of it entirely to the pleasure of your honourable Court. If you shall adjudge the deposit to me, I shall consider it as the most honourable approbation and reward of my labour, and I wish to owe my fortune to your bounty." 17 MAY 1793.

My Lords, this is a communication on the 20th of January, 1782, made by Mr. Hastings to the court of Directors, of a sum which before that time he appears, by the evidence of Mr. Larkins, as fast as it was received, to have applied to the public use.

Imputation of corrupt intention.

The first circumstance on which the honourable Managers rely, in order to prove a corrupt intention on the part of Mr. Hastings is this:—that he suggests to the court of Directors that, if they should adjudge the deposit to him, he would consider it as the most honourable approbation and reward of his labours.

My Lords, whether or not—supposing that in point of law the court of Directors could have adjudged the deposit to Mr. Hastings—they ought to have acted in that way, is a circumstance which now, upon the part of Mr. Hastings, delicacy forbids me to examine. I will, therefore, only say that, in point of fact, the court of Directors did not adjudge the deposit to Mr. Hastings, but conveyed to him their approbation of his conduct, after having received this sum; he having thus faithfully appropriated it to the public service. It seems, however, to me that [from] an application to the court of Directors to adjudge the deposit to Mr. Hastings, it is a most extraordinary mode of reasoning [to suppose] that Mr. Hastings meant at any time to appropriate that deposit to himself, without any such application. It seems to me that the circumstance of an application to the court of Directors excludes every thought of that kind, and establishes directly the reverse.

Assertion of the disclosure being necessitated by the largeness of the sum.

There is also another circumstance on which the honourable Managers rely, as explaining the conduct of Mr. Hastings in disclosing the receipt of this sum; for they refer your Lordships to a passage which will be found in a letter of

17 May 1793. Mr. Hastings written to the court of Directors—I have not the passage before me, but I shall hereafter have occasion to refer to it—in which Mr. Hastings states, that, when fortune threw in his way a sum of a magnitude that could not be concealed, then he informed the court of Directors of it. To this circumstance, that the sum was of a magnitude that could not be concealed, the honourable Managers impute Mr. Hastings having revealed it to the Directors. Now, be it so, for the sake of argument. Does not that also equally turn against the honourable Managers? Because, if they give credit to Mr. Hastings and believe what he has stated to be the truth, namely, that the sum could not be concealed on account of its magnitude, it seems an odd mode of argument to insist, that, when he is conscious of that, he should resolve nevertheless to conceal that sum which, according to him and to them—adopting the belief from him—in spite of his endeavours, could not be concealed! That circumstance equally with the former seems to me to prove that, in the first instance, even if Mr. Hastings had been a man who on other occasions was supposed to be corrupt, the construction put upon his conduct by the honourable Managers, namely, that he could not conceal the receipt of this sum, and therefore must have disclosed it now, excludes the idea of concealment at any moment whatever. In both these instances, we get rid of any idea of concealment on the part of Mr. Hastings.

Misinterpretation of Mr. Hastings' meaning.

But it seems to me that the honourable Managers have misinterpreted this passage in the letter of Mr. Hastings; because, when he states that, when fortune threw in his way a sum of a magnitude that could not be concealed—he means that it would be discovered in the manner that Mr. Larkins discovered it;—that is, that the receipt of such a sum as 100,000*l.* applied to the public service could not be concealed, from the magnitude of the application, but would be discovered, as, in point of fact, it did happen that Mr. Larkins discovered it in this instance. It seems to me quite impossible to put upon the letter of Mr. Hastings the construction the honourable Managers contend for; because that would be utterly repugnant to another part of their case, namely, that in which they state that Mr. Hastings never did communicate to the court of Directors the receipt of the sum in question, till such time as he could not conceal it from them. Now it seems to me that they have proved directly the reverse, because they have put this question to Mr. Middle-

ton;—whether he at the time knew of the receipt of this present by Mr. Hastings? And, Mr. Middleton having answered to the honourable Managers that he did not, it is then followed up with another question;—whether extraordinary means must not have been used to conceal it? To which Mr. Middleton answers, that he thinks there must.

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Evidence of Mr. Middleton.

Now I will, for the sake of argument, admit that opinion of Mr. Middleton to stand in the place of the fact; and, in arguing this case, the honourable Managers shall, for the sake of reasoning it, have it conceded by me, if they please, that extraordinary means had been used to conceal it. Then [what becomes] of the construction put by the honourable Managers upon the letter of Mr. Hastings, that this sum could not be concealed, when they prove by Mr. Middleton himself, the Resident upon the spot, that it was so effectually concealed from him, that Mr. Middleton has told your Lordships that the first time he ever heard of the 100,000*l.* was when he heard of it in England, from the report of one of the committees of the House of Commons? The honourable Managers, therefore, certainly do not give the true and just construction to this passage in the letter, which only meant that the receipt and application of the sum must divulge it; because the honourable Managers have proved that the person who, of all others, was the most likely to have discovered it, that is, the Resident at the court of the Nawab, remained in the most profound ignorance of it, till he heard it for the first time, as I stated, in the report of the House of Commons. From the evidence, therefore, as furnished to me in this respect, I am intitled distinctly to state that, by the letter of the 20th of January, 1782, Mr. Hastings disclosed to the public the receipt of a sum of money which it would have been in the power of Mr. Hastings to have concealed for ever, supposing he had been inclined to do it. This letter, then, on the 20th of January, 1782, conveyed information of the transaction to the court of Directors.

Your Lordships perceive that there is one assertion in this letter which, as it has been made the subject of some observation on the part of the honourable Managers, I will once for all dispose of. It is stated that the donation was not made in specie but in bills, which have been in part only and tardily realised, being drawn on the house of Gopal Doss. This letter is dated on the 20th of January, 1782. Now, the honourable Managers have in their turn successively insisted, as if it was a most material fact to

Tardy realisation of the bills.

17 May 1793. convict Mr. Hastings of an untruth at this time, that, on the day when he stated that it had been tardily realised, the greatest part of the sum had been paid; and, in order to show this, they give in evidence to your Lordships a payment of four lacs—the particulars are stated in page 1158—which, coupled with former payments, leaves but a few rupees of the sum of 100,000*l.* in future to be received; and from thence the honourable Managers at once infer that the assertion of Mr. Hastings was untrue—that, in the month of January, only part of this had been tardily realised.

Its inconclusiveness, from not being dated.

Undoubtedly, the honourable Manager would succeed in establishing this if he could only prefix any date to this account, which, when your Lordships find the entry, is merely general,—that is, January, 1782, without prefixing any day. I wish the honourable Manager would tell me where he got his intelligence, that this payment was made before the 20th of January, 1782; yet he assumes that fact, which fact appears upon the account, merely for the sake of giving a contradiction to Mr. Hastings, and, in respect of that contradiction, inferring a fraud. But it seems to me the honourable Manager ought to have done directly the reverse; because, if the payment is merely entered generally under the month of January, and might as well have been paid subsequently to the 20th as prior to it, it seems but just to have given credit to Mr. Hastings for the truth of his assertion; more particularly when it could answer no purpose to falsify it. I think the last examination of this circumstance will fortify the assertion of Mr. Hastings and disprove that of the honourable Manager, because the probability is that the payment of four lacs and a half was made subsequently to the 22d. Referring your Lordships, therefore, once for all, to page 1158 of your minutes, in which the account in question occurs, you will find that in no particular whatever does it support the assertion made by the honourable Manager.

My Lords, on the 20th of January, 1782, Mr. Hastings disclosed to the court of Directors the receipt of a sum of money which he had received in the month of September.

Early information of the receipt of the money forwarded to the Directors.

It becomes, therefore, essential for me to account for the conduct of Mr. Hastings in the intermediate time. And, undoubtedly, the first question that occurs is this:—whether, before the 20th of January, 1782, any opportunity had occurred to Mr. Hastings, at Patna, by which he could inform the court of Directors of the receipt of this sum; because

it seems to me that if, in point of fact, Mr. Hastings does inform the court of Directors of it by the very first opportunity, it may fairly be inferred that, if an opportunity had sooner occurred, he would have availed himself of it. And, therefore, I must state the case in this way;—that, having informed the Directors of it by the first opportunity—that furnishing evidence that he meant to avail himself of the first opportunity—if that opportunity had occurred on the day of his receiving the money, he would have conveyed the intelligence to the court. But it will appear from the evidence that no opportunity did occur between the month of September, when the money was received, and the 20th of January, 1782, when the information was given to the court of Directors. The information, therefore, of the receipt of this money was conveyed to the court of Directors by the first possible opportunity; and in the meantime, as I have shown by the evidence of Mr. Larkins, every rupee of it, as it was received, was faithfully appropriated to the public service. 17 May 1793.

Its appropriation to the public service.

Now couple these two facts together—the appropriation to the public service in the intermediate time, and the intimation to the court of Directors by the first opportunity— and then tell me, in this case as in the former, on what ground is it that the honourable Managers can possibly contend, against all this weight of evidence produced by themselves, that Mr. Hastings ever did for a moment entertain the purpose of applying this 100,000*l.*, without the consent of the court of Directors, to his own use and benefit? It seems to me that all the evidence excludes this idea, and proves directly the reverse.

Evidence of Mr. Wright.

Your Lordships will afterwards find that Mr. Wright, who is the accountant to the Company, in page 1158, has directly proved the appropriation of every part of the 100,000*l.* taken at Chunar. Then it stands upon the books of the Company, proved at this moment by their proper officer, as an appropriation by the hands of Mr. Hastings to the public service. It seems to me, therefore, that it is unnecessary to trouble your Lordships with any further observations on that part of the case, as far as it depends upon the letter of the 20th of January, 1782.

Letter of Mr. Hastings, of the 22nd of May, 1782.

My Lords, the next letter which occurs that relates to this transaction will be found in the printed Minutes, page 1114, which is the letter of the 22d of May, 1782, and in which Mr. Hastings thus states to the court of Directors:—

17 May 1793.

"In a letter which I had the honour to address you in duplicate, and of which a triplicate accompanies this, dated the 20th of January, 1782, I informed you that I had received the offer of a sum of money from the Nabob Vizier and his ministers, to the nominal amount of ten lacks of Lucknow siccas."

Examination of Major Scott respecting the delivery of the letter of Jan. 20th.

Now here I must pause for a moment, because a very extraordinary circumstance has occurred with respect to an honourable gentleman who was examined as a witness at your Lordships' bar. It appears that this letter was transmitted by Mr. Hastings to Major Scott, for the purpose of being delivered by him to the court of Directors, and the honourable Managers have addressed questions of this sort to the witness:—whether he had not a discretionary power from Mr. Hastings to withhold from the court of Directors the communication of this letter, according to the state of parties at the time in England?

My Lords, to the insinuation which that question conveys it is enough to give the answer made on oath by the honourable person to whom I allude, when he informed your Lordships that he had not, directly or indirectly, any authority whatever from Mr. Hastings to retain this letter; that the delivery of it did not depend upon the state of parties, but that the moment he received it he went to the India House and delivered it to the chairman, as the orders of Mr. Hastings directed him to do.

But, my Lords, that circumstance becomes a little more extraordinary, as a question in the mouth of the honourable Manager, if your Lordships will only attend to the letter of the 22d of May, 1782, that is about three months after, the former being in January, 1782, in which it is stated by Mr. Hastings to the court of Directors:—

"In a letter which I had the honour to address you in duplicate and which in triplicate accompanies this."

Now, the letter of the 22d of May, 1782, was not addressed to Major Scott to deliver to the Directors, but went in the ordinary channel; and yet in this letter Mr. Hastings refers to the letter of the 20th of January, 1782, which it was impossible for Mr. Hastings, in the course of three months, to know whether Major Scott had delivered or not.

What, then, becomes of this curious inquiry thus industriously pursued with respect to the discretionary power of Major Scott to withhold this letter, which it appears, in a subsequent letter, three months after, is expressly recognised as having been written upon the 22d of January? Pardon

17 MAY 1793.

me, therefore, if, with all the respect I pay to the honourable Manager's ingenuity, I waste no more of your Lordships' time in pursuing such inquiries as these. Taking it for granted, then, that Major Scott had no such authority, and that the letter was delivered in the manner he stated, I proceed to the account given of this in the letter of the 22nd of May.

Mr. Hastings' account of the transaction.

Mr. Hastings states in that letter, that he informed them in the former that he had received an offer from the Nawab Wazir and his ministers, to the nominal amount of ten lacs of Lucknow siccas,—

"And that bills on the house of Gopaul Doss had been actually given me for the amount which I had accepted for the use of the honourable Company, and I promised to account with you for the same as soon as it should be in my power, after the whole sum had come into my possession."

This promise—that is, the promise of accounting to the Company, after the whole of it had come into his possession—on the 22nd of May, 1782, Mr. Hastings states—

Mention made by him of the receipt of other sums.

"I now perform; and deeming it consistent with the spirit of it, I have added such other sums as have been occasionally converted to the Company's property through my means, and in consequence of the like original destination."

And your Lordships will find that the fifth article of the account, which occurs in page 1115, is an entry of the sum of 10 lacs, 30,275 rupees, being the produce of the sum mentioned in the Governor General's letter to the honourable the Secret Committee, dated the 20th of January, 1782, and credited in the Governor General's account. So that, here again, in the month of May, 1782, is a recognition of the letter which had been written in the month of January, 1782.

Implication of Mr. Larkins in the Charge.

But with respect to this, as with regard to the former, a considerable doubt also occurs, and it is now [not] merely whether the gentleman at your bar is guilty of that corruption which the honourable Managers impute to him, but in this instance guilt thickens, crimes accumulate, and the question for your Lordships now to consider will be—whether a man who hitherto has borne a character in all possible respects exemplary and irreproachable, who has been the subject of panegyric by all the successive Governors under whom he served—I mean Mr. Larkins—whether your Lordships will, upon the sort of insinuations which the honourable Managers have thrown out, come to this conclusion—which they aim at, or their insinuations mean nothing—that Mr. Larkins is guilty of foul, wilful and

17 May 1793. corrupt, perjury, committed by subornation of Mr. Hastings? To that extent, and not short of it, has the honourable Manager opened this part of the case—not the honourable Manager who summed it up: he, to do him justice, abstained from such an observation—but the honourable Manager who opened it has expressly gone that length.*

The withholding the letter of the 22nd of May.

The circumstance in respect of which this charge against Mr. Larkins occurs is the withholding a letter of the 22nd of May, 1782, which communicated to the court of Directors, not merely the receipt of 100,000*l.*, but the receipt of every other sum which Mr. Hastings ever had taken of Dinagepore, Nuddea, Cheyt Sing, Kelleram, Nundulol, the Wazir, all entered in this account. It seems that this letter, which was intended to go on the 22d of May, 1782, was from various causes not sent till some time in the month of the following January.

Corrupt motive imputed.

The honourable Managers, therefore, infer that, though the letter was written and dated upon the 22d of May, 1782, yet that at that time the letter was not intended to be sent, and, consequently, that Mr. Hastings did not intend to give any such intelligence to the court of Directors. The question, therefore, for the consideration of your Lordships will be, what foundation is there for any such Charge?

Mr. Hastings' account of the delay.

The account Mr. Hastings gives of it, in the letter of the 16th of December, 1782, is this:—

"The dispatch of the Lively having been protracted from various causes from time to time, the accompanying address"—which is the letter of the 22d of May, 1782—"which was originally designed and prepared for this dispatch, no other conveyance since occurring, has of course been thus long detained. The delay is of no public consequence, but it has produced a situation which, with respect to myself, I regard as unfortunate, because it exposes me to the meanest imputation from the occasion which the late Parliamentary inquiries have furnished."

Therefore, it appears that, between the 22d of May and the 16th of December, some information had reached India of inquiries that had been instituted in Parliament, and to that information the honourable Managers wish to impute the forwarding of the letter of the 22d of May, which, according to them, would not have been sent, though purporting to have been written on that day, unless such intelligence of those inquiries had arrived. That is the inference which, from this circumstance, the honourable Managers draw. Was then, my Lords, the letter of the 22d of May written

* The Counsel refers to the Speech of Mr. Burke; printed in vol. II. of the present publication. The summing up of the evidence on the Charge was by Mr. Fox.

and intended to be sent upon the day on which it bears date, or is it that fiction and forgery which the honourable Managers would represent it? On this subject I beg your Lordships distinctly to advert to the account which Mr. Larkins has given of this transaction. It is in page 1115 of the printed Evidence. 17 May 1793.

Mr. Larkins makes oath in these words—

"That the letter and account to which this affidavit is affixed, were written by me at the request of the Honourable Warren Hastings, Esq., on the 22nd of May, 1782, from rough drafts written in my presence; that the cover of the letter was sealed up by him in my presence, and was then intended to have been transmitted to England by the Lively, when that vessel was first ordered for dispatch; and that it has remained closed until this day, when it was opened for the express purpose of being accompanied by this affidavit." Mr. Larkins' account of the transaction.

Here, then, we have the oath of Mr. Larkins to these two facts—that the letter was written by Mr. Hastings in his presence, and sealed up, and that the letter was delivered by Mr. Hastings to him, Mr. Larkins, for the purpose of being sent to England. On what ground, then, is it that, in opposition to this testimony, given upon oath by a person of the first character and responsibility, the honourable Manager, in the course of his observations, would suggest that the whole of this was a contrivance and a fraud, and that, upon the 22d of May, 1782, no such letter was written by Mr. Hastings, nor any such account prepared by Mr. Larkins?

If your Lordships are, however, desirous to know what afterwards became of that letter, your Lordships will find the delay fully and satisfactorily explained in the subsequent letter of Mr. Larkins, of the 5th of August, 1786, which is in page 1154:—

"On the 21st of August I was taken alarmingly ill, and when I was sufficiently recovered to be put into a budgerow for the change of air, apprehensive that the packet might be closed ere I returned to the Presidency, I sent the letter by my jemindar with a verbal message to Mr. Secretary Auriol, requesting that he would take care that it was put into the Lively's packet. But Mr. Auriol, not knowing that it was a letter from the Governor General, declined taking charge of it for this purpose; alleging that it was repugnant to the standing regulation of the service for any servant to correspond with the court of Directors but through the Governor General and Council. I was at this time unable to write, and, not having any person about me who could have wrote what I dictated, I sent the letter by my jemindar to Mr. George Nesbitt Thompson, Mr. Hastings' private secretary, with the same request as that by which it had been tendered to Mr. Auriol. I returned to Calcutta on 13th of December, 1782, and immediately suggested to Mr. Auriol declines to forward the packet.

17 MAY 1793. Mr. Hastings the necessity of his accompanying this letter with the affidavit which I took before Mr. Justice Hyde, and a letter explanatory of the apprehensions which suggested this precaution."

Here then, my Lords, is the subject completely explained by Mr. Larkins, upon his oath. The letter was delivered to him for the purpose of being sent, and was not sent merely from the accidental circumstance of Mr. Auriol not knowing it to be a letter from the Governor General, and it being contrary to the rule of the service for any other person to correspond with the Directors.

In this letter of the 16th of December, 1782, in which Mr. Hastings adverts to the account made up by Mr. Larkins, Mr. Hastings expresses himself thus:—

Offer of Mr. Hastings to answer upon oath respecting these transactions.

"Upon the whole of these transactions, which to you"—the court of Directors—"who are used to view business in an official and regular light may appear unprecedented if not improper, I have but a few short remarks to suggest to your consideration. If I appear in any unfavourable light by these transactions, I resign the command and legal security of those who commit crimes or errors. I am ready to answer every particular question that may be put against myself, upon honour or upon oath."

This offer to the court of Directors to answer every question with respect to each of these sums, whether upon honour or upon oath, is in the letter of the 16th of December, 1782.

And, here again, I ask your Lordships, is it for a moment possible, after all the observation that you have had of Mr. Hastings during the length of time that he has appeared at your bar, after all the light that you have got with respect to every part of his conduct from the voluminous papers upon your table—I ask, do you believe that he was a man capable of offering to the court of Directors to be examined upon his oath with respect to the receipt of these sums, if at that moment he knew that he must have perjured himself in answering the question in that way, by admitting the receipt of these sums and denying that they were taken—as the honourable Managers assert they were —for his own use and benefit, by declining, as he says, the common security of all those that commit crimes? He is willing to answer the inquiry in any shape that it may present itself—in any way that it may meet him—whether addressed to his honour or addressed to his oath. Let it come in whatever form it may, he throws out the challenge upon the 22d of May to the court of Directors and professes himself ready, under any sanction that they can devise, to give

them a full explanation of his conduct. I shall hereafter have to conduct your Lordships' attention to that—what inquiry did the court of Directors make in consequence of this offer?—and, when I come to that letter, I pledge myself to show that the information given by Mr. Hastings, instead of being short of that asked for by the Directors, as to the main and material facts with regard to which information is important, goes infinitely beyond it. But for the present Mr. Hastings states this:— 17 MAY 1793.

Factions in the Council.

"The sources from which these reliefs to the public service have come would never have yielded them to the Company publicly: and the exigencies of your service—exigencies, created by the exposition of your affairs, and factions in your Councils—required those supplies."

Now, my Lords, was this true, or was it false? Did faction in the Councils of the Company require the supplies from Dinagepore and Cheyt Sing? My Lords, have I not distinctly shown that both these measures, which finally led to the preservation of India, were opposed by the majority of the Council at the time, on the express ground that the Government was unable to support them? Therefore, it appears that this assertion is in every respect verified by the documents which have been produced; and that, when Mr. Hastings stated that they were made necessary by faction in their Councils, he only stated that which the proceedings of those Councils evince beyond the possibility of any doubt.

Mr. Hastings then adds:—

Power of concealing the receipt of the sums in question.

"I could have concealed them, had I had a wrong motive, from yours and the public eye for ever."

My Lords, he has not concealed them. He has brought forward every receipt to the public eye. Whether it has been received in that favourable manner in which it ought, in consequence of this discovery, I leave it to the feelings of your Lordships to decide. But, as far as I have hitherto gone in the investigation of the receipt of all these different sums, I have made out this fact to your Lordships beyond the possibility of doubt—that, in every case whatever, so far from their having been applied to any purpose of his own, they were faithfully appropriated to the public benefit. The public treasury was the place where Mr. Hastings deposited his bribes! The public treasury was the sink of his corruption! Thence issuing through all the various channels of the state, it diffused life and strength and

17 MAY 1793. vigour to the political body, in its most anxious, fainting and struggling, moments!

Again, what became of the money taken from Cheyt Sing? Madaji Scindia shall tell you that. It drew off his attention from the war in the Guzerat, and made him a suitor for peace. Again, what became of the money taken from Dinagepore and Nuddea? Mudaji Bosla shall tell you that it opened a passage through his territories for the force under the command of Colonel Pearce, which, reinforcing Sir Eyre Coote, opened a way to the Carnatic, and that, detaching him from the confederacy, it afterwards brought about a general disunion of all the powers leagued against us. These were the effects, as far as we have gone in the investigation of this subject, of the different bribes stated to have been taken by Mr. Hastings; and thus did this corrupt man uniformly act, who is represented as never having a thought, a wish, or any feeling, for the public, but that in his breast nothing but rank, cold and mean, corruption were to be found, engendering mean and base plans for his own personal interest!

Inquiry addressed by the Directors to Mr. Hastings.

My Lords, I have now gone through all the letters written by Mr. Hastings to the court of Directors, down to the letter of the 16th of December, 1782; and, before I quit this subject, in order to close once for all the subject of these letters, I would beg your Lordships to advert to the account which is given of this transaction in a subsequent letter written by Mr. Hastings, dated the 11th of July, 1785. It will appear, that, in consequence of the letter of the 16th of December, 1782, offering to answer any questions that might be put to him with respect to the receipt of these sums, the court of Directors did address a letter to Mr. Hastings, in which in particular, among other things, they desire to be informed of the different periods when each sum was received. Mr. Hastings, it is admitted, was not at Calcutta at the time when this letter reached Calcutta. He left it soon after, and arrived in England without having sent an answer. But the answer to that letter your Lordships will find in page 1151 of the printed Minutes, dated the 11th of July, 1785, and in that letter Mr. Hastings states—

Reply of Mr. Hastings.

"I will now endeavour to reply to the different questions which have been stated to me in as explicit a manner as I am able. To such information as I can give the honorable court is fully entitled, and where that shall prove defective, I will point out the easy means by which it may be rendered more complete.

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Reference to Mr. Larkins for a detailed account.

"First, I believe I can affirm with certainty that the several sums mentioned in the account transmitted with my letter above mentioned, were received at or within a very few days of the dates which are prefixed to them in the accounts. But as this contains only the gross sums, and each of these was received in different payments, though at no great distance of time, I cannot, therefore, assign a greater degree of accuracy to the account. Perhaps the honorable court will judge this sufficient for any purpose to which their inquiry was directed; but if it should not be so, I will beg leave to refer for a more minute information, and for the means of making any investigation which they may think it proper to direct respecting the particulars of this transaction, to Mr. Larkins, your accountant general, who was privy to every process of it, and possesses, as I believe, the original paper which contained the only account that I ever kept of it. In this each receipt was, as I recollect, specifically inserted, with the name of the person by whom it was made; and I will write to him to desire that he will furnish you with the paper itself, if it is still in being and in his hands, or with whatever he can distinctly recollect concerning it."

My Lords, Mr. Hastings did write to Mr. Larkins, the accountant general to the Company—then and now the accountant general to the Company—who was privy to every part of these transactions for which Mr. Hastings stands impeached at your Lordships' bar—desiring that he, Mr. Larkins, would communicate the result of that privity to the court of Directors, and that he would give all the light that he was in possession of with respect to every one of these facts. For it appears that Mr. Hastings did not do that which the nature of his great employment would not permit—that he was not the person who in every instance made entries in his own books, or kept his own accounts, but that he necessarily trusted to others; in particular, he trusted, as it appears, to Mr. Larkins, a man of worth and honour, who for that reason he called upon to be privy to every part of these transactions; and, therefore, to Mr. Larkins it is he refers for that account which at the very moment was in his possession. That account is produced by Mr. Larkins: it goes to every part of the public conduct of Mr. Hastings: it specifies, even to the minutest fraction, every rupee he has ever received, and inserts the date with respect to every sum: it states the place from whence every sum was got: it mentions the appropriation of it, in every particular instance. And that account, after holding out a full light upon every part of the public conduct of the gentleman at your bar, furnished by Mr. Larkins at the desire of Mr. Hastings, is the only weapon with which the honourable Managers can attack him upon this occasion—

Production of Mr. Larkins' account.

17 MAY 1793. [the weapon] which was furnished by himself, they turn against him for the purpose of his own destruction!

My Lords, I have now completely made out that pledge which I gave to your Lordships sometime since—that, as far as I have hitherto proceeded, I would prove the appropriation of every rupee to the public service; that the discovery was by Mr. Hastings himself and not by others; and that all the evidence which, after the lapse of years, your Lordships have been able to obtain with respect to these transactions, is that evidence which Mr. Hastings himself has furnished and deposited upon your Lordships' table. My Lords, this evidence—the testimony of Mr. Hastings and Mr. Larkins—is to be disbelieved: each is to be stigmatised, each to be declared infamous: your Lordships are called upon, to mutilate and garble this history of the fact: and, while on the part of the honourable Managers they wish to rely, in order to establish the fact, on the receipt of the money, they think it consistent with justice and humanity to reject the explanation which has been given by Mr. Hastings, supported by Mr. Larkins, with respect to the application of that money in each individual instance! On the subject of this letter I shall not, therefore, trouble your Lordships with any further remarks.

My Lords, the next subject in the order of time that occurs, in the course of the Charge, is a transaction which is stated to have happened in the year 1781, when it is alleged that Mr. Hastings—

Present from Nundulol.

"Took as a present or gift from a certain person called Nundulol the sum of 58,000 rupees, equal in value to 5,000*l.* sterling and upwards, or some other large sum of money."

My Lords, here again, as in the former instance, your Lordships will perceive that the receipt of this sum is not coupled with any fact whatever in respect to which it alleged to be a bribe, but it stands merely in the light of a present, and must, therefore, depend entirely upon the construction of the Act as it applies to it. Supposing it to be a present taken for the use of the Company, the only question, therefore, will be, whether this present, which was made by this person to Mr. Hastings while up the country, has by Mr. Hastings been faithfully appropriated to the public service? And, with respect to that, it is only necessary here to refer your Lordships to the account contained in the letter of the 7th of May, 1782, which I have so often

had occasion to refer your Lordships to. This sum forms the fourth article in that account, under an entry in the month of August— 17 MAY 1793.

"Received in cash and employed in defraying my public disbursements, and credited in the Governor General's account of durbar charges for April, 1782."

Its application to the public service.

So that here, in this account of durbar charges transmitted to the Company, is the entry of this sum, equally as of every former sum, appropriated by Mr. Hastings to the public service. Therefore, upon the subject of this receipt from Nundulol, with respect to which nothing more appears than that this sum was received by Mr. Hastings when up the country, it is unnecessary to state the account, which is the only evidence of the receipt of the money, and which equally goes to show the application of that money to the use of the Company, and not of Mr. Hastings.

My Lords, I believe I have now gone through all the presents which occur upon this part of the Charge. The next subject upon which I mean to trouble your Lordships with some observations will be that which occurs in the course of another Charge—I mean the fourteenth Charge, which, your Lordships know, relates to the receipt of a sum of money, not charged to be a bribe from the Nawab to Mr. Hastings, offered to Mr. Middleton; which Mr. Hastings is not accused of having received, but his conduct is stated as having been criminal in a great many different respects, in the manner that is pointed out.

Subject of the fourteenth Article.

CONCLUSION OF THE SPEECH OF ROBERT DALLAS, ESQ., COUNSEL FOR MR. HASTINGS, IN DEFENCE UPON THE SIXTH, SEVENTH AND FOURTEENTH, ARTICLES OF THE CHARGE, RELATING TO PRESENTS; 24 MAY, 1793.

24 MAY 1793. MY LORDS, I now rise for the purpose of concluding those observations with which it has been my duty at present to trouble your Lordships, in opening this part of the case. And, when the Court last adjourned, I was about to enter, with your Lordships' permission, upon the consideration of the fourteenth Article of this Impeachment, which imputes to Mr. Hastings, not the receipt, but the refusal of a bribe; that refusal being, however, attended with circumstances which have been deemed of a nature to furnish matter for criminal charge.

My Lords, I was at the same time perfectly aware that there yet remained, with respect to the sixth Article, one subject to be discussed; I mean the receipt of a sum of money charged to have been received, in the year 1783, from a person of the name of Raja Nobkissin. As that receipt is posterior in order of time to the second present, I had originally intended to postpone the consideration of it till such time as I had gone through the receipt of that supposed bribe. But, my Lords, on consideration, in as much as it more naturally classes itself with those sums which have been in fact received, I shall, with your Lordships' permission, enter first upon the consideration of that subject; and more particularly as the disposition and arrangement of the matter by me will make no ultimate difference in the final arrangement of your Lordships' time, with respect to this transaction.

Present from Raja Nobkissin. The Charge states, that, in the year 1783, Mr. Hastings first fraudulently solicited a loan, and afterwards corruptly and illegally did take and retain as a present or gift, from a certain person called Raja Nobkissin a sum of money, which is stated in the Charge to amount to 34,000*l.* sterling, or some other large sum of money. The Charge next alleges that—

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"Without any allowance or permission then or since had or obtained from the Directors of the East India Company, or any person or persons authorized or empowered to grant such allowance or permission, Mr. Hastings did apply the same to his own use, under pretence of discharging certain expences said to be incurred by him, the said Warren Hastings, in his public capacity, without any authority from the said Company to incur the same; and of which said expences the said Warren Hastings has not produced any sufficient voucher or account to the said Company."

Analysis of the Charge.

My Lords, this Charge, therefore, naturally divides itself into three distinct particulars. First, it alleges the fraudulent solicitation of a loan; next, it asserts that Mr. Hastings did afterwards take and retain what he had originally borrowed, corruptly and illegally, as a gift or present; and lastly, the Charge avers that he did apply that sum to his own use and benefit. To these three distinct transactions, each in the order in which it is stated in the Charge, I shall, therefore, beg leave to draw your Lordships' attention.

Alleged solicitation of a loan.

My Lords, the first fact that is stated is the fraudulent solicitation of a loan. And, with respect to the whole of this subject, your Lordships will find that the evidence begins in page 1120 and continues to page 1149; the intermediate pages containing, as I apprehend, all that relates to the subject.

My Lords, the only evidence of the receipt of this money is in two documents which are now before the Court. The one is a letter from Mr. Hastings, dated upon the Ganges, the 21st of February, 1784, and addressed to the court of Directors, in which he states, that:—

Letter from Mr. Hastings to the Directors.

"Having had occasion to disburse from my own cash many sums for services which, though required to enable me to execute the duties of my station, I have hitherto omitted to enter in my public accounts, and my own fortune being unequal to so heavy a charge, I have resolved to reimburse myself in a mode the most suitable to the situation of your affairs, by charging the same on my durbar accounts of the present year, and crediting them by a sum privately received and appropriated to your service, in the same manner with other sums received on account of the honourable Company and already carried to their account."

My Lords, this letter to the court of Directors is the first intimation that appears upon the evidence, and the only intimation of the receipt of any such sum. So that, in this case, as in every other which I have yet had occasion to examine, your Lordships perceive that the only discovery which at this moment exists, with respect to the transac-

24 MAY 1793. tion, is that made by Mr. Hastings himself. The information, however, contained in this letter was merely general, and all that it informed the court of Directors of was, the receipt of a sum of money to a certain amount, and the application of that sum in the manner which the letter points out. But your Lordships will find that, in a subsequent part of the Evidence, in page 1149, after having been called upon in the House of Commons to account for this transaction, Mr. Hastings comes forward and distinctly discloses the name of the person from whom this sum was received, and mentions all these circumstances in respect of which at this moment the honourable Managers would fain persuade your Lordships to adopt a belief of his guilt.

Mr. Hastings examined before the House of Commons.

My Lords, the history of this transaction must, therefore, be found in one or other of those documents produced by the honourable Managers, which, as I have stated, are at this moment the only evidence of the transaction. The account given by Mr. Hastings in both is substantially the same; that is, that this was a sum of money originally borrowed, but, afterwards, upon an offer being made of it to Mr. Hastings for his own use and benefit, he determined to retain it for the service of the Company, and to apply it to certain purposes which he stated to be of a public nature. I should be glad, therefore, to know, unless the honourable Managers can establish this fact—that the mere solicitation of a loan and afterwards retaining the sum borrowed in the shape of a gift or present, for so the Charge expressly alleges it to have been, [is fraudulent]—I should be glad to know what part of this transaction it is that warrants the epithet by which they have chosen to describe it when they call it a fraudulent loan. It is still more extraordinary when one considers under what circumstances and to what kind of person, upon this slight and rash evidence, this sort of charge has been thought fit to be placed.

His account of the transaction.

At this very moment, it now stands distinctly proved to the Court, that Mr. Hastings had actually appropriated to the public service 200,000*l.* which he might have retained for himself; and yet, at this moment, and subsequent to that application, he is described as having meanly had recourse to a fraud to obtain the paltry sum—at least inconsiderable when compared to the other sum—of 30,000*l.* I trust, therefore, that I may dismiss this imputation from your Lordships' consideration of the Charge, and consider it upon

His conduct with respect to larger sums.

its true footing, as a sum of money though originally borrowed, yet afterwards taken and retained as a gift or present.

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The loan retained as a gift.

My Lords, the manner, however, in which this Charge is framed by those who prosecute at least proves that, in this instance, there is not a pretence that the giving of this sum of money could have relation to any corrupt purpose or service whatever; because your Lordships perceive that originally the Charge states that it was not tendered as a present, but that it was a sum of money actually borrowed by Mr. Hastings:—if so, that it was a sum of money originally borrowed by Mr. Hastings, and afterwards, at the express desire of the party, retained as a gift or present. It then resolves itself into precisely the same consideration with all the other gifts or presents on which before I have had occasion to make observations, and the only question that can arise, with respect to the mere receipt of the sum of money, will be, whether it was a sum taken in contradiction to the Act of Parliament; which will depend upon the construction of that Act, on which I will not trouble your Lordships with a single observation in addition to those I have already made.

Charge of appropriating the money to his own use.

But, my Lords, I now come to that which is the main and the material part of this Charge; for though, in the particulars that I have mentioned, it agrees with every other of the sort, yet your Lordships will find that in one material respect it is distinguished from all. And it is a fact in a great degree worthy your Lordships' consideration, that, notwithstanding the numerous receipts of money which are made the subjects of the present Charge, till the present moment the prosecutors have not ventured to allege that, in any one instance whatever, Mr. Hastings ever did ultimately retain to his own use, or appropriate to his own benefit, any one sum which upon any occasion whatever he ever received. Therefore your Lordships find now for the first time these words, distinguishing the present Charge from every other of the sort—"that he did appropriate to his own use and benefit." It is distinctly imputed to Mr. Hastings that he did that which, I admit, if it can be made out in fairness of reasoning, would amount to a direct breach of that Act of Parliament—that is, an appropriation of a sum, taken for the Company and belonging to them, to his own use and enefit.

The material consideration, therefore, for your Lordships

24 MAY 1793. will be, whether, under all the circumstances of this case, the application of this sum by Mr. Hastings, such as it was, can be deemed to have been a fraudulent appropriation to his own use and benefit of that which at the moment belonged to the Company? That question again must also depend upon the evidence which is at this moment before your Lordships.

Account to the Directors of the appropriation of the sum.

My Lords, in the letter of the 21st of February, 1784, I have already pointed out a passage which states that Mr. Hastings had incurred certain expenses in his public capacity, —or, as he expresses himself, expenses that were necessary to execute the duties of his station, and of which, at that time, he conveys accurate information to the court of Directors. This evidence, therefore, consists of two parts:—first, the letter itself; and, secondly, the account which the letter encloses; the letter containing an explanation of the account. And it is in the consideration of this that your Lordships will be called upon to decide, whether or not this application of the sum of 30,000*l.* is, as the Charge suggests, a fraudulent appropriation by Mr. Hastings, to his own use and benefit, of that which belonged to the public. Your Lordships will find the abstract of the account in question, which contains the particulars of all this Charge, in page 1146 of the printed Evidence; and in page 1120 will be found a full explanation of that abstract, the intermediate pages containing all the particulars of the different accounts.

The first observation which it occurs to me to make is upon the general abstract of the account itself; on referring to which, your Lordships will perceive that it is an account made out from the books of Mr. Hastings and Mr. Larkins, signed by him as a true and faithful account, beginning with the year 1772 and continuing to the 1st of January, 1784. So that, if this account be fraudulent in this respect—that Mr. Hastings did not disburse these different sums—it would follow that, in the year 1772, foreseeing that this transaction was to happen in the year 1783—that is, eleven years after—his books had been at that moment purposely and fraudulently corrupt, for the sake of covering a charge, which, however, it was quite impossible he should foresee would ever arise! I think, therefore, that I may distinctly state, with respect to this account, that, even if the articles were of a nature entirely different from what they were—if they were not transactions of so much public notoriety that it is impossible that any man who ever was in India can look at

Improbability of falsification of books.

Mr. Hastings' expenses.

this account and not see that the subject of those expenses existed within his own knowledge—I might rely upon the evidence the honourable Managers have produced—the abstract made out from the books of Mr. Hastings in respect to the existence of these charges. The whole of them are comprised in five several particulars. 24 MAY 1793

The first is an account of sums disbursed by the Governor-General for the salary of Lieutenant-Colonel Ironside, during the period in which he acted as his military secretary. With respect to this, I apprehend that, even on the evidence which the honourable Managers have produced, there cannot exist in the mind of any one person the slightest degree of doubt, because on referring to the explanation which is given of this Article in the letter of Mr. Hastings, in the year 1784, this is explained to be the customary pay of the Governor's military secretary; the difference between the customary pay of the Governor's military secretary and that which is allowed to Lieutenant-Colonel Ironside, during the time he acted in that capacity, being on account of his superior rank. Whether Lieutenant-Colonel Ironside ever acted in the character of military secretary, and whether, acting in that capacity, he was of a rank superior to those who had generally filled that office, were undoubtedly matters of public notoriety.

Early reference by him to the charges in his account.

But there is still further evidence; for, in this very letter, in which Mr. Hastings is stated to set up against the Directors an account consisting of fraudulent charges, with regard to this, the first article in question, he expressly refers them to a letter which he himself had written to the court of Directors in the year 1773, and in which this subject was distinctly referred to their consideration:—

"But,"—Mr. Hastings states—"I presume it was overlooked in the pressure of other more important matter which at that time occupied your attention."

This evidence will be found in page 1120. Now, this being a letter to the court of Directors and referring to a fact which must have happened within their own knowledge, I trust it will scarce be contended that Mr. Hastings meant, in 1774, to state to the Directors that, in 1773, he had apprised them of this charge and submitted it to their consideration, unless he knew that fact to be true at the time—which, however, if false, the records of the Company would immediately have detected and exposed. With respect to this sum, which was trifling in itself—I believe, amounting to 8,511 rupees

24 MAY 1793. and no more—it does not seem to me that it can be necessary it should want any further explanation; because it now stands, or at least stood at the time of the date of this letter, upon precisely the same footing as it did in 1773—that is, the charge made by Mr. Hastings and a second time referred to the consideration of the court of Directors.

Hire of houses for his aides-de-camp.

The next article in the account is, sums disbursed by the Governor General for the hire of houses occupied by his aides-de-camp, from the 1st of December, 1775, to January, 1784—"33,323-8-0 current rupees." Here again, surely this is a fact about which there can be no doubt! Whether those people who served in the situation of aides-de-camp to Mr. Hastings did or not occupy houses at his expense, the usual allowance made by the Company not being sufficient for the purpose, is a fact easily ascertained.

Compilation of the Hindu and Mohammedan laws.

The next charges will be found in the fourth and fifth abstracts, and consist in an account of sums disbursed by the Governor General, for the diet and other charges of pundits employed in compiling the code of Hindu laws; for the salaries of persons employed in translating books of the Mohammedan law, and other charges incidental to the same; and for the wages and other expenses of the Madrosa or Mohammedan academy.

Now, with respect to these three articles, which, I believe, amount together to 87,357-11-9 current rupees, it seems only necessary to refer your Lordships to the explanation given of them in page 1120 of the printed Evidence; and with that explanation I will leave it to your Lordships to say, whether, so far from these having been fraudulent charges made by Mr. Hastings, they are not expenses which it would be a fraud committed by the public against him, if that at this moment he were not to be reimbursed.

The Hindu code.

The first is a charge which consists in the subsistence of the pundits who were assembled in Calcutta, and employed during two years in compiling a code of Hindu laws, for the public use. Now, do the honourable Managers mean to deny that that code, which is in the possession of perhaps most of your Lordships at this moment, which was necessary to the administration of justice there—do they mean to say that it never was translated, or that those persons never were employed?—or, admitting it to be translated and they employed, do they mean to contend that the translation was a work unnecessary for the public, and that this ought to be done at the expense of Mr. Hastings, and not of that public

for whose use it was to be applied? For one or other of these things the honourable Managers must do, or the allegation, in this instance as in the former, completely falls to the ground. 24 May 1793.

The next article is the same sort of amount of sundry salaries paid to the professors of the Mohammedan laws, for translating from the Arabic into the Persian tongue a compendium of their laws, called the Hedaya, which is held in high estimation, and part of a more voluminous work. With respect to both these, Mr. Hastings states— The Hedaya.

"It would exceed the due bounds of this letter to expatiate on the utility of this work; yet I may be allowed to vindicate the expenses of it by one summary argument, which is, that while the Mahomedan Law is allowed to be the standard of the criminal jurisprudence of your dominion under the controul and inspection ot your English servants, it seems indispensably necessary that the judges of the court should have a more familiar guide for their proceedings than the books of the Arabic tongue, of which few have opportunities of obtaining a competent knowledge."

Therefore, in this instance, as in the former, it seems to have been a translation of that which was essentially necessary for the administration of criminal justice.

My Lords, the third and last charge is that of an academy, instituted for the study of the different branches of the sciences taught in the Mohammedan schools. Now, I shall submit fairly and distinctly to your Lordships, whether all these are not expenses necessarily of a public nature, and such as Mr. Hastings undoubtedly had a right to charge to the Company? The Mohammedan academy.

My Lords, the only remaining article upon which it is necessary for me to observe is of a different sort; and, as it is by much the most material of the charges which occur in the course of the account, amounting to the sum of one lac and a half of rupees, it will require some explanation. It is an account of charges disbursed in the office of Governor General, from the 1st of September, 1772, to the 1st of January, 1784—being a period of twelve years. The account of this disbursement is contained in a letter. It specifies the cause of payment in each instance, the name of every person who received; and, in every instance, they appear to be charges necessarily incurred in the execution of that office, the business of which related to the public service. My Lords, I say so upon the best possible ground, because I trust that the honourable Managers will hardly venture to assert, either that there did not exist such an office as that of Governor General—that these accounts, from beginning

Disbursement of the office of the Governor General from 1772 to 1784.

24 MAY 1793. to end, are with relation to that a fiction and a fraud; nor will they contend that, if it did exist, and the business that was done in it related to the public and not to the Governor General himself, that the public ought not to be at the expense of that office.

The two questions, therefore, that naturally arise are these:—did there exist such an office as that of Governor General; and were the expenses incurred in it such as fairly ought to be charged to the Company? Now, putting entirely aside all consideration of the conduct of Mr. Hastings, I undertake that, in point of evidence, I shall be able hereafter distinctly to prove this fact to your Lordships—that, since the time of the administration of the office of Governor General by the noble Lord who at present fills it—I mean Lord Cornwallis—there are precisely the same charges made by him to the Company during every month of his administration, and allowed by the Company; except with this difference—that, taking one month by another they exceed, by the proportion of 150 rupees, the charges that are made by Mr. Hastings. After this evidence, is it, therefore, necessary to add more to satisfy your Lordships that Mr. Hastings was fairly intitled to charge to the Company, as the expenses of the office of Governor General, those very expenses which, ever since his departure, in the instance of the noble Lord who has succeeded him, have been charged to the Company and actually allowed? What then becomes of the allegation of fraud with respect to this Article; and does it not completely vanish, in the same manner as with respect to all the preceding?

Expenditure under Lord Cornwallis.

Allowed by the Company.

The nature, then, of this transaction stands distinctly explained—that it was not a private, secret, fraudulent, application of the money belonging to the Company to the use of Mr. Hastings, unknown to them; but that it was an application of it to public purposes, particularly specified in an account with which they were furnished at the time, and of which, therefore, in every instance, they had as complete knowledge as he possessed himself. On this ground, therefore, I state that, even at this moment, if no such charges had been made, on every principle of justice and by every rule of law, Mr. Hastings would have been intitled to recover against the Company the articles which form the subject of the present account.

Justice of Mr. Hastings' claim.

But, my Lords, when the honourable Managers would represent this to your Lordships as a corrupt and criminal application of money which belonged to the Company to his

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own use, it becomes a little material that they should consider the language in which Mr. Hastings expressed himself to the court of Directors at the time. After having given a distinct explanation of all these different charges, he states thus:—

Letter to the Directors.

"I humbly submit the propriety of carrying these expences to your account, by the consideration that it was not possible for me to be influenced in incurring them by any purposes of my own interest. I will candidly confess, that, when I first engaged both in this and in the preceding expence, I had no intention of carrying it to the account of the Company. Improvident for myself, zealous for the honour of my country and the credit and interest of my employers, I seldom permitted my prospects of futurity to enter into the view of my private concerns. In the undisturbed exercise of the faculties which appertained to the active season of my life, I confined all my regards to my public character, and reckoned on a fund of years to come for its duration. The infirmities of life have since succeeded, and I have lately received more than one severe warning to retire from a scene to which my bodily strength is no longer equal."

This letter, as I have already stated, appears to have been written upon the Ganges, at the time when Mr. Hastings was barely recovering from a very dangerous illness:—

"With this change in my condition, I am compelled to depart from that liberal plan which I originally adopted, and to claim from your justice, for you have forbid me to appeal to your generosity, the discharge of a debt which I can with the most scrupulous integrity aver to be justly my due, and which I cannot sustain."

Now is it possible, after this evidence has been produced —after it appears distinctly to your Lordships, that, with a full explanation of every article of this account, Mr. Hastings submits the propriety of these charges to the court of Directors—can it be said that this amounts to the sort of application which the Charge would suggest? Is this a criminal application to his own use and benefit? It seems to me that there is one way of considering the subject which must put a complete end to this part of the Charge—the only one in which the honourable Managers have ventured to pretend that there is anything like an appropriation of public money by Mr. Hastings to his own purposes:—either this debt was due, or it was not: take it either way: the honourable gentleman shall have his choice. If these sums were due from the Company, then the payment of a debt with the money belonging to the Company by Mr. Hastings was an application, not to his use, but to their use. On the other hand, if it was not due, in what respect can the honourable Managers maintain their Charge;

Justification of the appropriation of the money.

24 May 1793. —for the allegation is that he appropriated to his own use and benefit? Did he so? The direct contrary appears upon their own evidence; for, after submitting the propriety of those charges to the court of Directors, all that can be said of it is, that it was a conditional appropriation of so much money belonging to them in his hands, subject to their allowance of the account; and, therefore, he transmits the account, expressly stating at the time that he submits the propriety of these charges being made by him. If, thus submitted as to their propriety, they did not receive the approbation of the court of Directors, or if, in point of law, Mr. Hastings was not intitled to set up these charges, then the court of Directors, with notice of this sum in the hands of Mr. Hastings, could at any time recover it from him. So that it appears to be, not that which the Charge suggests—an absolute and irrevocable appropriation—but an appropriation conditional altogether, that is, subject to the allowance of the account. Therefore, take it on either of these grounds:—if the sum be really due, it was an appropriation to their use and not to his: take it on the other, it is impossible to say that it was that fraudulent appropriation which can make him criminal, because everything is submitted to the court of Directors, and the final retaining the money by him could only depend upon their final approbation of the accounts. With that observation I leave this part of the case: and, unless I much deceive myself in the consideration of it, the Defence of Mr. Hastings acquires additional strength from this—the only instance in which the honourable Managers have attempted to give any proof whatever that he did ever apply to his own benefit a single rupee of any sum he ever received for the Company. It seems, therefore, to me that, in this part of the Charge, it is impossible to suggest, when it is fairly and candidly considered—taking the notice to the court of Directors, the account he sent, the explanation of each article and the ultimate appeal to them—that there was any purpose of concealment or of fraud whatever.

Openness of Mr. Hastings' conduct.

My Lords, I have now gone through all the different transactions which form the subject of the sixth Charge; and I now come to that which makes the matter of the fourteenth Article—the allegation of a second present, stated to have been offered, some time in the year 1782, to Mr. Hastings from the Nawab. With respect to this transaction, your Lordships will find it stated at length in the printed

Offer of a second present from the Nawab.

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Articles, page 107, and in the printed Evidence, page 1265. The first allegation which occurs in the course of the Charge is—that, sometime in the month of January, or in the month of February, 1782, a second offer of a present of 100,000*l.* was made to Mr. Hastings, through Mr. Middleton, on the part of the Nawab. And the first allegation which occurs in the course of the Charge, as containing matter of criminal conduct upon the part of Mr. Hastings, is—that he did not instantly remove Mr. Middleton from his office—whom the Charge chooses to describe as having been employed in the discreditable office of an agent to offer bribes.

Intended as a present, not as a bribe.

My Lords, on what ground it is that, in contradiction to all the evidence that is produced, in this instance, the honourable Managers choose to represent the sum in question as a bribe, I am utterly at a loss at this moment to conceive; because it distinctly appears, that, so far from Mr. Hastings having suggested any idea of the kind to the Nawab, or any service being at the time depending in consideration of which the money was to be given, it was a voluntary offer on the part of the Nawab, made through Mr. Middleton—Mr. Hastings not being at Lucknow at the time—and having reference to no one service whatever, but distinctly stated, in the course of all the evidence that is given—in the letter of Mr. Hastings, in the instructions of Mr. Hastings, in the minute of Sir John Macpherson—as a sum gratuitously offered to Mr. Hastings, or, in the language of all these minutes, as a gift or present. I, therefore, deny that Mr. Middleton in any respect acted in that capacity which the Charge states—that is, as agent in the offer of a bribe from the Nawab to Mr. Hastings.

Mr. Middleton communicates the offer to Mr. Hastings.

What, then, was the result of Mr. Middleton's conduct? All that appears is, that, in a conversation that passed between him and the Nawab, he was desired to convey to Mr. Hastings an intimation that the Nawab was desirous to make him a second present of 100,000*l.*;—an intimation which, whether or not Mr. Middleton had conveyed it, would of course have found its channel through a thousand various means to the ear of Mr. Hastings; unless it is meant to be said, that no intelligence could be conveyed to Mr. Hastings from the Nawab but through Mr. Middleton.

But I state, and trust I shall be hereafter able to prove, from an accurate consideration of all the evidence, that, if Mr. Middleton had not related this conversation to Mr. Hastings, he would have betrayed the trust reposed in him, and

24 MAY 1793. would have been guilty of that conduct which might have proved an essential injury to the interests of the Company. It is nowhere proved that the transaction originated with Mr. Middleton; that his conduct was improper in any respect as to the offer itself; or that he did anything more than communicate to Mr. Hastings the conversation which he had upon that subject with the Nawab. Thus much as to the first assertion that occurs in the course of the Charge—which is deemed of sufficient consequence to be made, in the shape of an impeachment, matter of criminal charge against Mr. Hastings—that he did not immediately remove Mr. Middleton, for no other purpose whatever than that he had communicated this information.

Charge of suffering the present, in the form of bills, to remain in the hands of agents.

The Charge states that, at the time when the offer was made, that is, in February or April, 1782—and those dates will be material for your Lordships' consideration of the subject—the present was at this time in bills or landed securities—that is, what are called jaidads had actually issued, for the purpose of realising—but that Mr. Hastings, though he had reason to believe and be satisfied of the existence of this, suffered them to remain—first, in the hands of Mr. Middleton, and, afterwards, of Mr. Johnson. The only evidence on which that assertion is founded seems to have been a declaration made by Mr. Hastings, which your Lordships will find in the printed Evidence, page 1268, and another made by Sir John Macpherson, who seems to have understood it from Mr. Hastings—in the course of the same page—and in which, probably speaking from the information he had at that time received from Major Palmer, who was up at Oude, Mr. Hastings says, that jaidads had at that time been issued. But in this it completely appears that Mr. Hastings was altogether mistaken; because your Lordships will find, that, even upon the face of the Charge, it is averred as a fact, that Mr. Johnson, in whose hands these jaidads were said to have been, constantly and uniformly denied it. That is a fact which might well have been ascertained, one way or the other. And that which puts a complete end to the assertion is the evidence which will be found, page 1271, in a letter from the Nawab to the Governor General and Council, and which occurs in the course of that page, and wherein your Lordships will find he is extremely averse to giving that sum he had at first offered; this being in the month of August, 1782—that is, some months after the original offer had taken place. Therefore, it is quite impossible that, at

Subsequent unwillingness of the Nawab to give the sum

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the time Mr. Hastings supposed it to have happened, there could be any such securities in the hands of Mr. Middleton and Mr. Johnson. Therefore, this allegation of the Charge is completely disproved by the evidence the honourable Managers have themselves produced!

Charge of concealing the offer.

Having now disposed of those which appear to me to be the immaterial parts of this Charge, but of which it was, however, necessary to take some notice, I come to that which undoubtedly does constitute the essential part of it;—and that is, that, though this present of 100,000*l.* was secretly offered through Mr. Middleton in the month of April, 1782, during a period of one year and four months, that is, till the month of October, 1783, no notice whatever was taken of this transaction; not a single document—states the Charge—was produced to the Council General; but, during the whole of this long period, all is silence, mystery, concealment!

Eventual disclosure of it.

My Lords, this Charge, however, does admit, that, at the expiration of that time, light at length appears; and, as usual, it was furnished by the hand of Mr. Hastings himself. And your Lordships will find that, at last, in the month of October, in the year 1783, the Charge distinctly admits that Mr. Hastings himself produced, for the information of the Board, these secret instructions to his private agent, Major Palmer, so described in the Charge as to excite every unworthy and injurious suspicion, and which secret instructions it is the drift and tendency of this Charge to impute to Mr. Hastings that he purposely withheld from the public eye during so long a period of time; as if, during that period, this concealment could have happened for some foul or criminal purpose. Was it so? And here it becomes necessary to have recourse to those instructions with regard to this mysterious transaction, which, during this unusual length of time, Mr. Hastings is stated to have concealed.

Secresy of the offer and impossibility of detection.

Your Lordships will recollect distinctly what the transaction is. It is the offer of a sum of money, amounting to 100,000*l.*, to Mr. Hastings, under circumstances that, if he had taken it, it is impossible to suppose that any discovery or detection could have taken place. According to the Charge itself, there were no persons to be privy to the transaction but the Nawab, Mr. Middleton and Mr. Hastings. Now then let us see how Mr. Hastings, with respect to this sum of 100,000*l.*, acts, in these secret instructions which he gave to his private agent, in order to regulate his

24 May 1793. conduct upon this interesting and important occasion. The instructions, which are admitted to have been afterwards recorded by Mr. Hastings upon the Company's consultations, and which I will prove, beyond a possibility of doubt, to have been the original instructions given at the time to Major Palmer—nay, which I am intitled to state to have been such upon the authority of the Charge itself—these secret instructions to Major Palmer are to be found in these words:—they are in the printed Evidence, page 1266; the date of them is the 6th of May, 1782. The title of the paper is "Extract of a Letter from Warren Hastings, Esq., to Major William Palmer. Dated Fort William, 6th of May, 1782." Now, my Lords, attend for a moment to what were the secret instructions of Mr. Hastings to his private agent, Major Palmer, with respect to this 100,000*l.*:—

Instructions to Major Palmer.

"The Nabob Vizier having, by an intimation made to Mr. Middleton in the month of February last, been pleased to express his desire to make me a present of ten lacks of rupees and requested my previous consent and acceptance of the same, I desire you will make my acknowledgements in proper terms for this instance of his liberality and benevolence, and acquaint him that I am precluded from accepting it by many conditions, but by one especially, which I beg him to take in good part,—namely, that if I had received it at the time in which the tender of it was made, it would have been liable to constructions, even in his own breast, so repugnant to the disinterested friendship which I profess and bear towards him, that no consideration of personal profit could have induced me to accept it at such hazard. If he should renew the offer to you, you will inform him that my objection remains the same and is insuperable; but that if he will be pleased"—to do what?—"to transfer it to the Company, for the relief of their present and known distresses, I will accept it on their behalf with a thankfulness equal to that which I should have felt and expressed for the gift had it been made to myself; the wants of the Company being at this time of equal concern to me as my own."

Mr. Hastings' rejection of the present on his own part.

Proposes to accept it for the Company.

"If he would transfer it to the Company, I will accept it on their behalf with a thankfulness equal to what I should have felt if I had retained it for myself, their wants being of equal concern to me with my own." These are the instructions Mr. Hastings appears to have given to Mr. Palmer in the month of May, that is, within a fortnight or three weeks after the offer was made. And here your Lordships now have the secret instructions which the base and corrupt person at your bar is supposed to have fraudently withholden from the notice of the public—in order, no doubt, to appropriate to his own use and benefit the sum which was offered to him! Now these instructions are produced—what are they? An attempt to appropriate this money to himself?

No! but solicitations, entreaties, instructions to Major Palmer to endeavour, by every means in his power, to obtain the transfer of 100,000*l.* to the public which the Nawab would have given to himself, and which, according to the honourable Managers, was even at that instant spread out before him, soliciting his acceptance, courting his receipt, tempting his eye, whether in the shape of bills or of landed securities. Yet under these circumstances what does he do? He gives those orders to Major Palmer which I have stated. These are the dreadful secrets of Mr. Hastings that circulate in secret whispers! These are the frauds he, during a year and four months, endeavours to conceal, and which being dragged out turn out to be this—that he endeavours to appropriate to the use of the Company 100,000*l.* offered to himself: and in that is imputed to Mr. Hastings a corrupt preference of the public interest to his own! 24 May 1793.

Charge of corrupt motive in concealing the transaction.

But in point of proof the subject does not rest here. The honourable Managers have alleged, that a letter which was written by Mr. Middleton to Mr. Hastings upon the occasion was not produced; and they further state, that it does not appear that the least notice whatever was taken of the corrupt transaction, neither was any document concerning the offer directly produced to the Council General until the month of June, 1783—one year and four months after the offer of the said present; at which time "it did appear that, on the 23rd of May, 1782, Mr. Hastings had given secret instructions to his agents, Palmer and Davy, to persuade the Wazir to apply the said present to the use of the Company; which instructions he did not produce till the 20th of October, 1783."

Refuted by the instructions to Major Palmer.

Now to this part of the Charge, which, from the beginning to the end, I will venture to say derives no support whatever, in any one material instance, from the evidence produced, but is directly disproved by all the testimony, it is again material for your Lordships to attend. For here the Charge is, that the first notice which the Council General got of this offer of 100,000*l.* in the month of February or April, 1782, was by the instructions given to Major Palmer in May, 1782, which, the Charge states, were criminally withheld from the knowledge of the members of the Council General till October, 1783—that is, one year and four months after. My Lords, if the fact were so, still it would prove nothing whatever in support of this Charge; because the Article itself admits the existence of instructions in May,

24 May 1793. 1782—that is, immediately after the offer was made; and it sets forth these instructions as expressly authorising Major Palmer to refuse the gift for Mr. Hastings, and instructing him to persuade the Nawab to transfer it to the use of the Company. I might, therefore, admit, without the least suspicion of corrupt conduct being able to attach upon Mr. Hastings, all that the Charge states to be true. But I will show it to be directly the contrary to the fact; and, so far from Mr. Hastings having withheld this transaction from the knowledge of the Council General, I will prove by all the evidence which the honourable Managers have themselves produced, that, even in the very moment of the formation of these instructions—before they were put into the hand of Major Palmer—they were distinctly communicated to the different members of the Board. If I prove this, what becomes of this important allegation in the Charge?

Communication of them to the Board.

To contradict the Charge, therefore, in this respect, I would beg leave to refer your Lordships to the evidence which occurs in page 1265, where your Lordships will find that a minute with respect to this transaction is introduced by Mr. Hastings, which is dated the 21st of October, 1783; being the date when, according to the Charge, Mr. Hastings, for the first time, produced those instructions to the Council General, which, it is supposed, for want of their being before produced, the members of that Council were completely ignorant of.

Minute of Mr. Hastings.

In this minute, Mr. Hastings states the frequent use that has been lately made of Major Palmer's name in the records of the late transactions at Lucknow:—

"The assertion made by Mr. Johnson in his defence that Major Palmer was at Lucknow in the character of a political agent, and the private suggestions which have been conveyed to me of misconstruction passed on the nature and object of Major Palmer's deputation, compel me to lay before the Board the original instructions which he received from me, and which, if I can trust to my own recollection and the rule of conduct which I have invariably prescribed to myself in cases of this kind, were both seen and approved by the actual members of the Board."

Approval of the instructions by the Board.

Now, here we have the assertion of Mr. Hastings distinctly going to this point—that these instructions were seen and approved by the different members of the Board:—we have the assertion of the Charge that they were not produced to the Council General till 1783. If, therefore, the honourable Managers mean to take the distinction between

the members of the Council General and the Council General itself, I will give them the benefit of this distinction; but if, on the other hand, the Charge means—which it does, and I put it boldly to your Lordships for your consideration of it in this respect—that a profound silence reigned which kept them in complete ignorance of the transaction till the year 1783, then I ask, whether the Charge be true in this respect, or the assertion of Mr. Hastings—that, in the year 1782, at the time of these instructions, they were seen and approved by the other members of the Board? The fact, therefore, which, on this part of the case, I am bound to make out in opposition to the Charge is, that, at the time that the instructions to Major Palmer were framed, they were not only seen by, but they had obtained the distinct approbation of, every individual who at that time constituted a part of the Council General. At that time the Board consisted of Mr. Hastings, Mr. Macpherson and Mr. Wheler. Your Lordships will find that, on this day, Mr. Wheler appears from the consultation to have been absent up the country. I think that in fair and candid reasoning I may infer, and that every one of your Lordships will assent to the justness of the inference, that, if I find Mr. Hastings asserting that the instructions were seen and approved by the different members of the Board, and the only member who was present—that is, Mr. Macpherson—admits they were seen and approved by him, it follows as a necessary inference, in point of fair and candid construction, that the instructions were seen and approved by Mr. Wheler, and especially if they never received any contradiction from that gentleman subsequent to that period of time. Nor is there any reason to suppose that Mr. Hastings would have shown them to one and not to the other. Mr. Hastings says they were communicated to the individual members of the Board. Mr. Wheler was not present to admit or deny. Were, then, those instructions communicated to Mr. Macpherson? Mr. Hastings states, that they were not only seen at the time, but were actually approved. Whether this is true or false will appear from what is said by Mr. Macpherson himself, to whom at that very moment the appeal for the truth or falsehood of this assertion is made; and your Lordships will find a minute of Mr. Macpherson's, in answer to Mr. Hastings, in page 1266 of the printed Minutes. On this appeal being made to him, Mr. Macpherson expresses himself thus:—

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"Though I do not remember to have seen Major Palmer's instructions

24 MAY 1793. in their present arranged state, I remember perfectly to have seen detached minutes or memorandums of his commission to Oude in April, or May, 1782."

Admission by Sir John Macpherson of having seen minutes of Major Palmer's commission to Oude.

So that these facts are, as stated by Sir John Macpherson as consisting with his recollection upon the subject, that, so early as April 1782, that is, immediately after the offer of the Nawab, which is stated to have been in February, of course, upon the very first intimation, instructions of some sort or other which Major Palmer received, though not in their present arranged state, yet in the form of detached minutes or memorandums, were seen by Sir John Macpherson, and it appears upon the face of those memorandums that, at this time, Mr. Hastings had given instructions to Major Palmer to prevail upon the Nawab to transfer this 100,000*l.* to the Company—for that is the question.

Sir John Macpherson says,—

His approval of the instructions.

"I approve of Major Palmer being sent thither and that Major Davy should accompany him. The objects of their mission were, as I recollect them, to inform the Government of the real estate of the Vizier's country, on information which was at the time withheld by our official agents, to ascertain the causes of the Vizier's seeming dissatisfaction, and to endeavour to induce him to transfer ten lacs of rupees that he offered to the Governor as a present to the Company's account, as a donation to them."

Here, then, is Sir John Macpherson distinctly stating that, in the month of April, 1782, he saw the instructions to Major Palmer, containing an order upon the part of Mr. Hastings to induce the Nawab to transfer to the use of the Company the 100,000*l.* which the Nawab had offered to himself. So far, therefore, from its appearing to be a thing which was buried in mystery and concealment, during the long period of time which the Charge suggests, it appears that, in the very first instance, it was communicated by Mr. Hastings to the different members of the Board, and that the instruction given to Major Palmer, such as it was, received their full, complete and cordial, approbation. The instructions, therefore, to Major Palmer were criminal or innocent. Take it either way for the purpose of the present argument. If I should state them as the most meritorious act that it is possible to conceive a man of the most disinterested nature to have been capable of performing, yet these instructions at the moment were not the act of Mr. Hastings alone, unknown to the other members of the Council, but received the approbation of the other individuals who composed the Council in common with himself. So that, with respect to this part of the Charge, it also appears that it is directly contradictory

and repugnant to all the evidence that has been produced in support of it! 24 MAY 1793.

With respect to the mere circumstance of not recording the instructions, that can make no difference whatever as to the appropriation of the money: and, your Lordships know, that has been done in many other instances of instructions—with regard to the arrest [of Mr. Johnson, etc.]* All of those were, for prudential considerations, withheld from entry at the moment by the Board. And, if it were necessary, one might mention the case of instructions to Mr. [Elliott]. But, as far as concerns the present part of the case, your Lordships will perceive that, with regard to these very instructions, which were brought forward by Mr. Hastings, on the [18th of October, 1783],* so far from having a wish to withhold any part of this transaction, he concludes his minute in this way:— Omission to record the instructions.

"I desire that this minute, with Major Palmer's instructions, may be added to the other papers which have been recorded on the general subject of the complaints preferred against Mr. Bristow, and transmitted with them by this despatch to the court of Directors." Desire of Mr. Hastings to record them.

Here, then, is the complete progress of the transaction, from its beginning to its close. A sum of 100,000*l.* is offered to Mr. Hastings—within his reach at the moment, according to the Charge. Instead of accepting it, he gives instructions to Major Palmer to obtain a transfer of it to the public. These instructions Major Palmer endeavours to act upon. And, my Lords, mark what follows, and which seems to me to be extremely important, because it throws a strong light upon every part of the conduct of Mr. Hastings, and materially assists and supports his Defence with respect to the receipt of all these different sums.

My Lords, there is one circumstance which distinguishes this transaction from the others which have preceded it. Your Lordships know, that, in every other instance, Mr. Hastings took gifts or presents which were offered to himself, meaning to apply them to the use of the Company, but not giving notice at the time to the persons of whom he received them of such intended appropriation; but in this instance the fact is otherwise, and Mr. Hastings states, in one of his letters to the court of Directors, upon which I had occasion to observe in the course of the last day, when he is called upon to state why these sums were privately received,— Refusal of the Nawab to transfer the present to the Company.

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* Supplied from the copy of Gurney's Report in the British Museum; Additional MS., 17,082.

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"The sources from which they were taken would never have yielded them publicly; that is, that, if I had informed the different persons that I meant to appropriate these sums to the use of the public, the sums would have been withheld, and the public who at the time wanted it would not have received the benefit."

Is that true or false? I refer it to the test of the only transaction in which it appears. The party is apprised of an intention in the mind of Mr. Hastings, from the instructions to Major Palmer to persuade the Nawab to transfer this present to the Company: he says, he shall feel a gratitude equal to what he should have felt if made to himself. But, the moment it is known that Mr. Hastings was not to have the benefit of it, but that it was to be applied to the public service, Hyder Beg Khan interposes; and, when he puts it upon the ground of its being given to the public, in that instant the public is disappointed of that receipt. Put it the other way:—if Mr. Hastings had acted with respect to this sum as he did with regard to the other, and, instead of explaining to the Nawab the purpose to which he meant to appropriate it, he had taken it as a sum to be given to himself, then, undoubtedly, he would have received the money, and the public would have had the benefit of it, of which they were afterwards completely deprived by a signification to the Nawab that the public wished to have it. Therefore, if it had been explained to the parties at the time that the appropriation of the sums was to be to the public service, and not to the benefit of Mr. Hastings, the public would probably in every instance have been deprived of the receipt, and of all those consequent advantages that followed the receipt of them. With this observation, therefore, I conclude all that I have to offer upon this part of the Charge.

Charge of mal-administration of the revenue.

My Lords, having now gone through the subject of all the different gifts and presents—either those which were actually taken, or that which was refused—as they occur in the course of the sixth and fourteenth Articles of these Charges, I now come to that which forms a distinct and a different subject for your Lordships' consideration: I mean, the conduct of Mr. Hastings in the administration of the revenues. My Lords, on this subject, on referring to the Articles themselves, your Lordships will find that those which respect the supposed corrupt receipt of money are kept entirely distinct and separate from that which relates to the administration of the revenues. So that, I think, I am fairly intitled to state, that, in the original conception

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of those who after the most mature deliberation had investigated the subject of Mr Hastings' government, there could be no relation whatever between any one of these sums which were thus taken and the changes which took place in the revenue system; because, otherwise, it would lead one to adopt this absurd conclusion of the honourable Managers, —that, in the formation of these Charges, they had separated the cause and effect, and that, while they were imputing corruption to Mr. Hastings as the cause of changing the revenues, they made the change of the revenue and sums received distinct transactions. In looking at the Charge, I undertake to assert that your Lordships will not, from the beginning to the end of the Article, find any one allegation of corruption with respect to the conduct of Mr. Hastings in the administration of the revenues—none! It will, therefore, result at last into the opinion which your Lordships may ultimately form of the propriety of the different measures in charge, and of the guilt or innocence to which that opinion may ultimately lead. Nor does it rest merely with the Charge in this respect. Undoubtedly, in point of evidence, no corruption being imputed to Mr. Hastings in the shape of any specific fact as the cause of these changes, the honourable Managers would not have been at liberty to give any such evidence; but they have not made the attempt, for, from the beginning to the end, you will not find that, in a single instance, they have endeavoured to state that, with respect to any one of the changes in the management of the revenues which are made the subject of accusation, they were changes which proceeded from corrupt motive, or, in other words, that they have offered any evidence whatever to show that Mr. Hastings had any inducement of the sort. It results, therefore, into a fair question of the propriety of those different changes, and the inference which your Lordships may draw from the changes themselves as to any motive which might exist in the mind of Mr. Hastings. And, extensive as this subject is in its original state, I yet trust that it will not be necessary for me to consume a great deal of your Lordships' time in going very much at length into any observations upon it; because, on referring to the Charge, though it consists of a great number of different accusations, branching out into an almost endless variety of particulars, yet, from the mass of accusation, three instances only are selected, with respect to which the inquiry of this day must be confined:—first, the deputation of amins, in

Corrupt motive not imputed.

Particulars of the Charge.

24 May 1793. the year 1776; secondly, the abolition of provincial Councils, in the year 1781; and, lastly, the appointment of the Committee of Circuit, which happened upon the abolition of the provincial Councils in the same year.

Indirect admission of Mr. Hastings' honesty.

These, my Lords, are the only transactions which, out of the administration of twelve or thirteen years of the extensive revenues of that country, the honourable Managers have been able to select, so as to make them the subject of evidence at your Lordships' bar; and, with respect to each of these transactions, they have not been able to couple the conduct of Mr. Hastings with any corruption, in any shape or form whatever. I, therefore, feel myself intitled to say, in the outset of this inquiry, that, be the result of it what it may as to the propriety of the different measures pursued, yet on the part of Mr. Hastings I may fairly assert, that, from the beginning to the end of his government, the administration of the revenues has been uniformly conducted by him in a way that leaves his conduct free and clear of all imputation of corruption; because those who have investigated it the most thoroughly, and have brought forward the Charges as criminal in other respects, have not thought fit to annex any degree of criminality to them upon the ground of corruption.

The deputation of amins.

The first, therefore, that occurs is that which was made in 1776 with respect to the amins. And, with regard to this, your Lordships will find that the Charge states that, in the year 1776, Mr. Hastings—the Council then being composed of himself, General Clavering, Mr. Francis and Mr. Wheler—

"Did depute into all parts of the provinces a great number of native officers, under the title of aumeens."

The accountability of Mr. Hastings exclusively.

So that your Lordships perceive that the fact which forms the foundation of the present Charge is the deputation of amins, in 1776, by Mr. Hastings into the different provinces. And the respects in which that fact is stated to be criminal are these:—that the amins were appointed by and accountable to himself only;—

"That they were armed with powers of a dangerous, arbitrary and tyrannical, nature, to inquire into the circumstances, rents and profits, of every man's estate, and to compel a discovery thereof, by arresting and punishing those who should dare to oppose or disobey, what was styled by the said Warren Hastings, the orders of Government."

The Charge further states that—

"The pretended purpose aforesaid was the more manifestly false

because the said Warren Hastings had, upwards of a year before this appointment of aumeens, informed the court of Directors, by a plan dated the 22nd of April, 1775, that the ascertaining the value of the several districts had been sufficiently accomplished. And the falsehood of the said pretended purpose is still more evident, because the said Warren Hastings well knew and was perfectly convinced of his own judgment and opinion that there was not any trust to be put in the accounts delivered in by the aumeens, and that no dependance could be placed on that mode of inquiry, as he knew that aumeens were not to be trusted." 24 May 1793. Pretended purpose in the appointment.

The great ground, therefore, upon which this Charge with respect to the appointment of amins rests is this—that they were officers deputed by Mr. Hastings unnecessarily, sent into the provinces armed with powers of a dangerous and arbitrary nature to compel the discovery of every man's estate and effects, and that they were invested with an arbitrary universal power of investigation, coercion and punishment, which gave them all means of fraud, vexation and cruelty. Arbitrary power committed to them.

My Lords, the distinct ground, therefore, of this Charge is—what? The instructions that were given to the amins. Why were they criminal? Because they invested them with powers of an arbitrary, dangerous and oppressive, nature. My Lords, did any oppression take place in consequence of these powers? That is not pretended! Did any corruption happen in consequence of this appointment? That is not pretended! Is there, in any instance, a complaint of the conduct of any one individual person who was employed as an amin upon this occasion? That is not pretended upon the part of the prosecution! So that this Charge, made against Mr. Hastings ten years after the transaction happened, resolves itself into a mere accusation with respect to the abstract tendency of these powers, which are stated to have been of a dangerous, arbitrary and oppressive, nature! Surely the instructions given to amins, which appear to have had reference to a purpose of great public utility—to ascertain the value of lands when the old leases were upon the point of expiring, in order to make a new settlement—every line of these instructions ought to be fraught indeed with the most arbitrary and oppressive characters, with respect to this power, before the honourable Managers could ever induce your Lordships to believe that the powers themselves, independent of any criminal motive, were improperly or culpably given. The conduct of the amins.

Look then to the instructions which are given to these amins, and tell me in what line of them it is that your Lord- Instructions given to them.

24 MAY 1793. ships are able to trace that which this Charge asserts—namely, that the powers that were delegated to them were of the nature described in the Charge, that is, arbitrary, oppressive, tyrannical, giving them the means of universal fraud, imposition and vexation. I say, look at the instructions. But where will your Lordships find them? For, though the whole of this Charge consists in the instructions given to the amins, and the abstract tendency of those instructions is stated to be dangerous, arbitrary and tyrannical, at this very moment the instructions themselves are not produced, and your Lordships have not, upon the Minutes of your evidence, a single document to prove the existence of this Charge!

Not produced by the Managers.

Good God! my Lords, is it possible to suppose the occurrence of such a case in any court of justice, in any country whatever? Ten years after the appointment of these native officers, Mr. Hastings is accused of—what? Not that any mischief happened from the powers, whatever they were, but that the abstract tendency of these powers was criminal, because it gave them the means of fraud, vexation and oppression. The instructions, therefore, which are the only evidence to prove the nature of the powers, one would, of course, imagine to be the first evidence produced to support the Charge; and yet, at this instant, though the instructions constitute the foundation of that Charge and were in the possession of the honourable Manager when he came forward to state it at this bar, they are withheld from your Lordships; and, on the ground of instructions which do not appear, you are desired to convict Mr. Hastings of a high crime and misdemeanour for having invested those persons with powers of that arbitrary and dangerous nature which they have described! I distinctly state—and let the honourable Managers point it out hereafter if the fact should be otherwise—that the instructions given to amins, in which alone could exist the means of fraud and vexation, have never to this moment yet been given in evidence before your Lordships. Let us a little see what the evidence is. For, though I might stop here and give to the winds this Charge with respect to which there is no proof whatever, the honour of Mr. Hastings requires that I should go further; and I undertake to prove, from all the evidence which they themselves have produced, that the instructions given to the amins were directly the reverse of that which the Charge states.

My Lords, the evidence upon this subject begins in page

1287, in which your Lordships will find that there is a proposal made by Mr. Hastings, upon the 1st of November, 1776, in which he states that, in whatever manner it may be hereafter determined to form the new settlement of the provinces, after the expiration of the present leases, it will be equally necessary to be previously furnished with accurate states of the real value of the lands, as the grounds on which it is to be constructed.

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Necessity for fresh valuation of the lands.

Mr. Hastings, therefore, proposes that, in order to ascertain the real value of the lands, the old leases being upon the point of expiring, a temporary office should be constituted to execute this business, under the conduct of one or two of the covenanted servants of the Company, assisted by a diwan and other officers, either selected from the offices of the khalsa or occasionally chosen for special commissions; that, for the sake of despatch, all orders issued from this office, for the execution of such particular services as shall have received the general sanction of the Board, be written in the name of the Governor General, and the control of it be committed to his immediate charge.

Dissection of the Charge.

Now, proceeding one by one to examine the various allegations of this Charge, the first that occurs is,—

"That he did depute into all parts of the provinces a great number of native officers under the title of aumeens, appointed by and accountable to himself only."

Officers to be appointed by the Board.

The evidence of this is, not the appointment of amins by Mr. Hastings, but a proposal that a temporary office should be [constituted] under the conduct of two covenanted servants of the India Company, which servants were to be appointed by the Board, and which servants, when thus appointed by the Board, were to have the appointment of these amins. So that, instead of their being the appointment of Mr. Hastings, it appears that in the original nomination of them, or in the removal, or in any conduct in respect of them, he was not to interfere, otherwise than in every act of government by the Board.

Orders to be sanctioned by the Board.

The next assertion is—"accountable to himself only." Now then, upon what evidence does this rest? That all orders, such as should have the general sanction of the Board, should be committed to the immediate charge of the Governor General. So that "the accounting to himself only," is in the instance of all those orders which, before he himself can interfere, are, according to this evidence, to have received the general sanction of the Board.

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Power given to the amins.

We next come to the evidence that is given with respect to the "powers of a dangerous, arbitrary and tyrannical, nature." The danger, the arbitrary and tyrannical nature, of which is said to consist in these circumstances;—first, that they were "to inquire into the circumstances, rents and profits, of every man's estate, and to compel a discovery thereof." How? "By arresting and punishing those who should dare to oppose or disobey what was styled by the said Warren Hastings the orders of Government." So that here, your Lordships perceive, the Charge distinctly asserts that powers were given to these amins to arrest and punish those who should dare to disobey, what by Mr. Hastings were called, the orders of Government. The powers themselves, I have already stated to your Lordships, are not given in evidence.

It appears, however, that the institution of this office was opposed by General Clavering and Mr. Francis. And your Lordships will find that, upon the 14th of March, 1777, a letter is proposed to be written by Mr. Hastings to the provincial Council at Moorshedabad, and as to which, in defect of evidence on the part of the honourable Managers, I will state to your Lordships what is the real nature of this Charge. At page 1297 of the printed Evidence of your Lordships, you will find this,—

Letter to the Council at Moorshedabad.

"I move that the following letter be written to the chief and Council at Moorshedabad:—

"'Complaint having been made by Ram Ram Bose, the aumeen of Bettoreah, that many of the zemindary officers refuse to deliver to him the accounts of the collections under their charge, and in other respects oppose him in the execution of his commission, we hereby positively direct that, on any complaint being made to you, either from him or from any other aumeens who have been deputed into the division, you do immediately take the most effectual means to support and enforce their authority, by causing such papers of the collections as they shall require, conformably to their instructions, to be put into their possession, by compelling the attendance of such revenue mohrirs as may be required by the aumeens to explain them, and by arresting and punishing those who shall dare openly to oppose or disobey the orders of Government in those instances.'"

The power of arrest confined to the provincial Council.

Your Lordships perceive, therefore, that, so far from the amins being invested with the power to arrest and punish in the manner this Charge alleges, Mr. Hastings himself, for the want of these powers, proposes that, upon the 14th of March, upon a specific complaint being made, a letter shall be written to the provincial Council at Moorshedabad, desiring them, on the complaint of the amins, to arrest and punish. So that the powers that were given consisted in

the instructions to the provincial Council; which clearly shows that the amins themselves had no power to arrest and punish, else it would not be necessary to apply to the provincial Council for the purpose. It appears that the words of this letter have been transcribed into the Charge and applied to the case of amins, for the mere purpose of stating the power to belong to them; whereas it appears upon the face of the letter that no such power is given to them, and the instructions are to the Council at Moorshedabad. Then to what does the Charge result? That, upon a specific complaint being made by one of these persons, a letter is written by the Board to the provincial Council at Moorshedabad, desiring them to arrest and punish those that disobey the orders of Government. 24 May 1793.

I shall be glad to know what milder instructions the meekest spirit could possibly have suggested than an instruction to the provincial Council—in whom, at least according to this Charge, trust and confidence was to be placed, for Mr. Hastings is impeached for having abolished it—not to use any torture, not to have recourse to any cruelty, as this Charge would suggest, but merely to arrest and punish persons who disobey orders of Government? If orders of Government are to be enforced, I know not upon what principle it can be, unless authority is lodged somewhere to punish those that disobey and rise up against it.

To show your Lordships, once for all, that no such powers whatever were given to these amins, it is only necessary to have recourse to an extract from a minute of General Clavering which immediately follows. In that consultation, General Clavering expresses himself thus:— Objection of Gen. Clavering to the letter

"I object to the proposed letter to the Council at Moorshedabad, since, under colour of the following words 'of arresting or punishing those who shall dare openly to oppose or disobey the orders of Government'—in these instances the Council of Moorshedabad or their officers may inflict punishment at their pleasure, by flogging and other modes of torture."

Here, then, we have a distinct objection made by General Clavering to the letter written to the Council at Moorshedabad; General Clavering being averse to giving to that Council the power to arrest and punish. But upon what ground can it be stated that a power given to the Council to arrest and punish upon the complaint of the amin was a power given to that amin? And yet this it is necessary to make out in order to support this Charge, which appears

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Power of arrest previously vested in the provincial Councils.

founded throughout upon this misconception—I will call it by no other name—in which it states this power to be given to the amins which resided before in the provincial Councils, and which it states that the Council at Moorshedabad was called to put into effect. I have shown now, I trust, that, if the honourable Manager had produced the original instructions, instead of supporting they would have refuted completely every part of those Charges; showing that these powers never were bestowed upon the person alleged to be in possession of them.

With respect to this transaction, there is but one other circumstance on which it will be necessary to observe, and that is what is stated in the conclusion of the Charge,—that, when Mr. Hastings—

Appointment of Gunga Govind Sing.

"invested them with an arbitrary and universal power of investigation, coercion and punishment, which gave them all means of fraud, vexation and cruelty, it was more peculiarly and indispensably necessary and the bounden duty of the said Warren Hastings to appoint none but men of the best, or, at least, irreproachable and unsuspected characters, to an office of such exorbitant power and authority. Notwithstanding which, and in neglect of such his bounden duty, and to the scandal of Government, to the encouragement of all misbehaviour and misconduct in office, he, the said Warren Hastings, did nominate and actually appoint to the principal superintendence of this business a person called Gunga Govind Sing, whom the said Warren Hastings knew to be a person of infamous character and to be loaded with reproaches as aforesaid, and who had been before dismissed for misconduct from an office which he held in the revenue department."

Now, with respect to this, as far as the terms of the Charge come under consideration, it would be sufficient to observe that the ground upon which it stands is completely removed, because I have proved that he did not give them the means of universal power and investigation. But, as far as applies to the particular person, I shall not take up your Lordships' time in discussing it now, because I shall have occasion to examine it more fully hereafter, when I come to that which is the concluding Article of the Charge, I mean, the appointment of the Committee of Revenue.

Having thus disposed of that part of the Charge which relates to the appointment of amins, I next come to that which regards the abolition of the provincial Councils. And, with regard to those, your Lordships will find that the Charge states thus:—

Abolition of the provincial Councils.

"That, very early in the year 1781, and within two months after the departure of Mr. Francis, by whose departure the Council General was reduced to two persons, he, the said Warren Hastings, in contra-

diction to his own sentiments repeatedly declared, and to his own advice repeatedly and deliberately given, and in wilful disobedience to the orders of the court of Directors, to whom he did not transmit any plan for their consideration, did, on sundry false and contradictory pretences and for his own corrupt purposes, again change the whole system of the public revenue of Bengal, as also the administration of civil and criminal justice throughout the provinces, by abolishing, and the said Warren Hastings did corruptly abolish, the said provincial Councils before the yearly collection was finished: and the said Warren Hastings did endeavour, contrary to his duty, to deceive the court of Directors, by assigning false reasons for abolishing the said Councils: and, so to deceive the said court, he, the said Warren Hastings, did, in a letter to the said court, dated the 5th of May, 1781, affirm that the plan of superintending and collecting the public revenue of the provinces through the agency of provincial Councils had been instituted for the temporary and declared purpose of introducing another more permanent mode by an easy and gradual change; such affirmation being in direct contradiction to his repeatedly declared sense, in the course of eight years, of the wisdom of that institution, of the necessity of never departing from it, and of his repeated advice that it might be made perpetual by Act of Parliament. Nor was the abolition of the said Councils introduced by any easy and gradual change or by any gradations whatever, as the said Warren Hastings had falsely affirmed, in his letter of the 5th of May 1781, to have been always intended, but was sudden and unprepared, and instantly accomplished by a single act of power of him, the said Warren Hastings, and before the yearly collection was finished." 24 May 1793.

This abolition of the provincial Councils, your Lordships perceive, is stated to have taken place very early in the year 1781. The evidence that relates to the subject, your Lordships will find, begins in page 1162. The establishment of the provincial Councils had happened in the year 1772: and, before I come to the measures that were taking place with respect to the abolition, it will be necessary to state to your Lordships in what manner this institution arose. Your Lordships perceive that the first allegation of a criminal nature that occurs, with respect to the conduct of Mr. Hastings, as to the abolition of the provincial Councils, is this—that he did abolish them—abolish them upon false and contradictory pretences, which pretences are stated to have been set forth in a letter of the 5th of May, as addressed to the court of Directors. And the falsehood of the pretences is stated to consist in this—that Mr. Hastings declared that they were originally introduced for a temporary purpose merely, and that the plan of superintending and collecting the revenue by their means was originally framed merely for the declared purpose of introducing another more permanent mode, by an easy and gradual change.

24 MAY 1793.

Account of the establishment of provincial Councils.

This first question, therefore, is—whether, in this affirmation with respect to provincial Councils, Mr. Hastings declared that which at the time was true or false. For what purposes the provincial Councils were originally established your Lordships will distinctly see in a minute of the 23rd of November, 1773, in page 1162 of the printed Evidence. At that consultation Mr. Hastings states, that the establishment of any consistent and permanent system, without such preparatory measures as might prevent the bad consequences of too sudden a change, and gradually introduce a more perfect form of superintendency, would be hazardous to the collections, and bring at once a greater weight of business on the members of the superior administration than they could possibly support.

He then proposes:—

Plan for a Committee of Revenue.

"That a Committee of Revenue be formed at the Presidency, which shall consist of two members of the Board and three senior servants below Council, for conducting the current business of the collections in the manner following."

There are then regulations with respect to the time of meeting of this Committee and the manner in which they are to proceed. There is then an extract from the same consultation, in which it is stated that—

Temporary substitution of provincial Councils.

"For the purpose of carrying the above plan into execution, in such a manner and at such times as may be found most convenient for effecting the purposes intended by it, and preventing the ill consequences to which the collections would be exposed by an improvident and precipitate innovation—resolved, that the following plan be immediately adopted, to be, and to be declared to be, only for a temporary purpose and introductory to the foregoing."

And then follows the plan of the provincial Councils, expressly stating it, in the very moment of its institution, to be only for a temporary purpose; and yet the Charge alleges that Mr. Hastings was guilty of falsehood, in a letter to the court of Directors, in the year 1773, because he stated the original institution of these Councils to have been for a purpose that was temporary only.

Now, upon this part of the case, all that I will beg of your Lordships to do will be this:—I will beg of your Lordships to refer to the Minutes, page 1162—to the letter in which Mr. Hastings gives an account of the reasons why the provincial Councils are abolished, which I will presently point out to your Lordships' consideration; and, so far from the

24 MAY 1793.

Charge being warranted in the slightest respect, your Lordships will find that he adopts the very language of the minute which led to the institution of the provincial Councils, stating them to be for a temporary purpose, when he avers to the court of Directors that such was the original institution. How, therefore, merely echoing that, in 1781, which had been stated in 1772, can amount to falsehood on the part of Mr. Hastings, I leave to the ingenuity of those who have framed this Charge and brought forward this evidence hereafter to make out. At present I state this—that provincial Councils, in their original institution, were not meant to be permanent, but were expressly at the moment declared to be for a temporary purpose only; and that, consequently, when Mr. Hastings, abolishing them afterwards, stated to the Directors that they were merely for a temporary purpose, he alleged that which was, in every respect and particularly, consistent with the truth and substance of the fact.

Approbation of the Councils by Mr. Hastings in 1776.

The Charge, however, alleges that, whatever might be the original purpose for which the provincial Councils were instituted, it appears that, in a great number of instances, which were specified upon the face of the Charge, from time to time these Councils had received the complete approbation of Mr. Hastings, and that, in the year 1776, which is stated to have been the last act of approbation, he had actually transmitted a plan to the court of Directors, being the draft of an Act of Parliament to make these provincial Councils perpetual.

Change of opinion in 1781.

My Lords, I admit all that to be undoubtedly true; but to what in that respect does the Charge result? From the year 1776 to the year 1781 we have no light whatever, on the part of the prosecution, with respect to the intermediate circumstances which might call for an abolition of what, in the year 1776, Mr. Hastings had completely approved; but I put this to your Lordships plainly and distinctly for your consideration—that, if I could prove no alteration of circumstances whatever to induce a change of opinion, where is the criminalty that Mr. Hastings, in the year 1776, thought that provincial Councils ought to be made perpetual, and that, in the year 1781, he was of opinion they ought to be abolished? State it in that way: the Charge merely results into a change of opinion; and, unless it can be said, that, at the distance of five years, to have entertained an opinion different from what you did five years before amounts to a

24 MAY 1793. crime, there is no criminalty whatever; even if I were not in any way to account for the change that appears upon the face of this Charge.

But, my Lords, the year 1781 was the date of the abolition of the provincial Councils. What had happened in the intermediate time? And, without recurring to all those instances of approbation which are collected and spread out upon the face of this Charge for the purpose of criminating Mr. Hastings, the plain question for your Lordships' consideration is this:—whether, all circumstances considered, the abolition of the provincial Councils at the time it took place was a measure wise, expedient and necessary, or whether, in any respect, merely from the circumstance of that abolition, you can impute to Mr. Hastings criminality of any sort whatever? This, my Lords, is the true and the only question; and that question to which I shall now address my observations, and solicit your Lordships' attention—namely, whether, all circumstances considered, in the year 1781, the abolition of provincial Councils was a wise and necessary measure?

Expediency of the measure at the time.

My Lords, in the first place, though your Lordships have had a great deal of evidence upon this subject in the testimony of Mr. Young, Mr. Muir and Mr. Harwood, I would take the liberty distinctly to point out this;—that, on going through the whole of the testimony of each of these different gentlemen, your Lordships will not find that, in any instance, any witness produced upon the part of the prosecution has gone the length of stating it as his opinion that the abolition of the provincial Councils, at the time it took place, was not a proper measure. So that the prosecution in this respect stands destitute of all evidence whatever.

What, however, is the evidence which appears upon your Lordships' Minutes, upon the face of the cross-examination of those witnesses whom they have produced? And, my Lords, the first part which it is material to point out upon the face of the Charge is, that the abolition of the provincial Councils is stated to have happened in the month of February, in the year 1781, and within two months after the departure of Mr. Francis; from which we are naturally led to conclude that, if that departure had not taken place and Mr. Francis had been present, the abolition of the provincial Councils could not have happened; or, at least, to the utmost of his power, Mr. Francis would have opposed

Assumed hostility of Mr. Francis to the measure.

it. It becomes, therefore, necessary, if we can possibly discover them, to see what the sentiments of Mr. Francis upon this subject were. But, before I go to them, I would observe to your Lordships that the Charge against Mr. Hastings, regarding the abolition of the provincial Councils, consists in this;—that, being of one opinion in 1776, he was of a different opinion in 1781. I may, therefore, fairly infer that, if it be criminal merely to change opinion in this way, if I find Mr. Francis of one opinion in 1776, upon the same principle as they argue with respect to Mr. Hastings, I must conclude that such continued to be the opinion of Mr. Francis in 1781; therefore, if, in the year 1776, I am able to bring forward to your Lordships any one opinion of Mr. Francis with respect to the abolition of provincial Councils, upon every principle of reasoning, as suggested by the honourable Managers, such your Lordships must take to have been the opinion of Mr. Francis in 1781; and unless, therefore, Mr. Francis be a man who upon public occasions acts contrary to his opinion, if it appears his opinion in 1776 was, that the provincial Councils ought to be abolished, your Lordships must suppose that, if he had been present, he would have voted for the abolition of them—that is, if I can show that in 1776 such was the opinion of Mr. Francis, whose departure, the Charge suggests, led Mr. Hastings to adopt the measure of the abolition. 24 May 1793.

I have now before me a very elaborate plan, consisting in a long minute of Mr. Francis, which I shall hereafter give in evidence, as far as it relates to this subject, and which is dated in January 1776. But, before I read this, I will again call your Lordships' consideration to what is the question;—namely, whether Mr. Hastings were criminal for abolishing the provincial Councils in 1781, immediately after the departure of Mr. Francis? Mr. Francis says—

"The execution of a plan of this nature will require the attention of Government to all parts [of the country at once; therefore cannot be performed by a Council confined to the capital of a large province. With respect to the present provincial Councils, I am of opinion that the institution was fundamentally wrong. There should be but one deliberative Council in the state. The powers delegated by that authority should be purely ministerial. It seems contrary to all principle to unite execution with debate. It looks like forcing two powers, moving on principles diametrically opposite in their nature, to keep pace with each other. A government so constituted will neither deliberate nor dispatch. Setting aside the obvious consideration of an inevitable slowness of proceeding, tedious disputes and voluminous consultations, one great and fatal objection to provincial Councils is generally felt and acknowledged by them- Minute of Mr. Francis.

24 MAY 1793. selves—their local situation makes them unable from their own knowledge to judge of the state of the distant districts, or to hear complaints or to yield timely redress, or in short to] enter into the detail of Government."*

His disapproval of the plan of the provincial Councils.

So that here your Lordships have the opinion of Mr. Francis—who is represented in the Charge as if he would in the year 1781, if he had been present, have opposed the abolition of the provincial Councils—in the year 1776, distinctly stating that it is an institution fundamentally wrong; contrary to all principle; incapable, therefore, of any altercation or cure; that it seems like forcing two powers which are contrary in their principle to move with an equal pace; and, therefore, according to every reason which Mr. Francis suggests, a measure which in the year 1776 called for immediate and for instant abolition. With respect to Mr. Francis's objections to this measure, it is impossible to imagine that they could have been changed in the intermediate period from 1776 to 1781; because your Lordships perceive that his objections did not go to any temporary evil, but to the institution being fundamentally wrong; wrong, therefore, in a respect for which there is no cure whatever! I now, therefore, leave it to your Lordships to say, with what propriety, with what fairness, Mr. Francis's name is brought forward upon this occasion, as a man whose absence we are to lament, because, if fortunately he had been present, the mischief would not have followed which followed, according to the Charge, from the abolition of these Councils. Such, then, in the year 1776 was the opinion of Mr. Francis!

But there is much further evidence which your Lordships already have upon this subject; and, upon referring to the printed Minutes, your Lordships will find the evidence which has been given by Mr. Anderson in page 1237. And your Lordships know that, of all the witnesses who have been produced, with the exception of one perhaps, there is no person who was more competent to speak upon that subject than the gentleman to whose evidence I am now endeavouring to draw your attention—that is, Mr. Anderson. His life had passed in the administration of the Company's revenues; he had been a member of the provincial Council at Moorshedabad; he had been president of the General Committee of Revenue; and afterwards a member of the Council at Calcutta. So that it is hardly possible to conceive a person whose situations gave him an opportunity of more know-

* Printed in the Appendix to the "Minutes of the Evidence," p. 1737.

ledge than Mr. Anderson had. What then is his opinion as to the present Charge? Your Lordships will find, in page 1230, Mr. Anderson distinctly specifies what those evils were which, in the year 1781, called for the abolition of the provincial Councils. He says, that disputes and dissensions had arisen among themselves, to the delay and to the injury of the public business. He states, beyond this, that there had been a material diminution in the public revenue under the administration of those provincial Councils:—all circumstances which had happened subsequent to the year 1776, when Mr. Hastings transmitted to the Directors a plan to make them perpetual.

24 MAY 1793.

Evidence of Mr. Anderson as to evils of provincial Councils.

And your Lordships will further find, in page 1228, that this question is put to Mr. Anderson, which meets the present Charge in all its essential particulars—

"Are you of opinion that the abolition of the provincial Councils, when it took place, that is in the year 1781, was a beneficial measure?"—

My Lords, to this Mr. Anderson on his oath distinctly answers—

"I think it was."

Here then, as far as we get it, we have the opinion of Mr. Francis, in the year 1776, confirmed by the opinion of Mr. Anderson, in the year 1781, both agreeing that these provincial Councils ought not to continue. And, on the other side, if the case rested here, you have no evidence whatever to oppose to it.

But, my Lords, let us proceed. I have stated that, with the exception of one person, there is nobody whose testimony upon the subject of the revenues is more deserving of consideration than the evidence of Mr. Anderson. But the person whom I must necessarily except is the present Sir John Shore, a witness also called by the honourable Managers, as a person whose information was to aid your Lordships with respect to the conduct of Mr. Hastings, and whose opinions, as I shall hereafter show, were to be considered of that important nature that of themselves they are to be transferred into evidence of the guilt of Mr. Hastings.

On the subject of provincial Councils Sir John Shore expresses himself thus, in the printed Evidence, page 1280:—

Similar opinion of Sir George Shore.

"The same objections that are made against the present Committee of Revenue may be applied to the system of provincial Councils; it is sufficient to say of them that the universal opinion strengthened by experience has pronounced the system fundamentally wrong and inapplicable to any good purpose."

24 MAY 1793. My Lords, was this true or false, when Sir John Shore on his oath states that the universal opinion has pronounced them fundamentally wrong and inapplicable to any good purpose? Are you disposed to believe that this evidence is to receive attention, or will you reject it altogether as unworthy of notice? If it is deserving of your attention, to what does the case result? That Mr. Hastings, without the imputation of a corrupt motive consisting in the allegation of one fact, is yet stated as guilty of a high crime and misdemeanour for having abolished, in the year 1781, these provincial Councils which, according to the opinion of three persons of all others most conversant with the subject—Mr. Francis, Mr. Anderson, and the present Governor General of Bengal, Sir John Shore—who all concur in opinion, was an institution fundamentally wrong, and which, in the situation of Mr. Hastings—for to that extent goes the evidence of Mr. Anderson and Mr. Shore—in the year 1781, they would have thought themselves negligent of their duty to the public, if they had not abolished, in the manner he did.

I therefore leave to your Lordships to say, whether, in opposition to the testimony of these three persons, your Lordships will not merely say that the measure itself was wrong, but will go the length of drawing this conclusion—that, in abolishing the provincial Councils, a measure thus supported by the opinion of every person conversant with the subject, Mr. Hastings was nevertheless guilty of a high crime and misdemeanour?

Charge respecting the establishment of a Committee of Revenue.

Having now gone through the examination of the abolition of the provincial Councils, I next come to that which is the last subject in charge;—I mean, the appointment of the Committee of Revenue, which immediately took place upon the abolition of the provincial Councils. It is necessary to draw your Lordships' attention to the distinct respects in which that is stated to be criminal upon the face of the Charge. The Charge states that Mr. Hastings,—

> "Having arbitrarily and corruptly abolished the said Councils, did substitute in their place a Committee of Revenue, consisting of four persons appointed by himself, on principles opposite to those which he had himself professed, and with exclusive powers, tending to deprive the members of the supreme Council of a due knowledge of and inspection into the management of the territorial revenues, vested by the Legislature in the Governor General and Council, and, in effect, to vest the same solely and entirely in the said Warren Hastings."

Then it states that—

> "He did also appoint a native of an infamous character, generally

mistrusted, hated and feared, in the province, and whom the said Warren Hastings knew to be of such ill character, called Gunga Govind Sing, to be dewan to the said committee, an office of great power and trust, and of such a nature that the committee aforesaid must chiefly rely upon the integrity and fidelity of the person who fills it for the due execution of their functions in collecting the revenue and preserving the subjects from oppression." 24 MAY 1793. — And appointment of Gunga Govind Sing.

It then states that Mr. Hastings—

"Did invest the Committee in the fullest manner with all the powers and authority of the Governor General and Council, and thereby took the general management and cognizance of the revenue out of the supreme Council, and deprived the members thereof of the means of acquiring such knowledge of the state of the revenue business as might enable them to execute the proper duty of their office, or obtain any knowledge thereof whatsoever, without great difficulty and discouragement."

The Charge then concludes with stating that—

"by thus delegating the power of the supreme Council to a Board consisting of persons appointed by himself, he acted in disobedience to the orders of the court of Directors, his masters and employers, and in open contempt and defiance of an Act of Parliament of the 13th year of the reign of his present Majesty."

The appointment, then, of the Committee of Revenue is stated to be a criminal transaction in these different particulars:— Particulars of the Charge

First, that it consisted of four persons appointed by Mr. Hastings and accountable to himself. Secondly, that he invested those four persons with all the powers and authority of the Governor General and Council, and by that means deprived the Governor General and Council of a due knowledge of and insight into the management of the territorial revenues. And, lastly, it affirms that he appointed to the principal office under him a person, the character of whom it describes, called Gunga Govind Sing.

With respect to the evidence which the honourable Managers have given upon this subject, your Lordships will find it begins in page 1178 of the printed Minutes. And, before I state to your Lordships what that evidence distinctly is, there are but two grounds upon one or the other of which the honourable Managers must be able to make out that the measure which they describe as criminal, in the respects which they state, was of such a nature.

The first ground is, that it must appear from the production of the plan itself. The second ground is, that, supposing the plan itself furnishes no such inference, then, independent of the plan, your Lordships must have before you the testimony of persons conversant with the subject, enlightened with regard to the management Nature of evidence requisite to support it.

24 May 1793. of the revenues, and who may have distinctly stated to your Lordships that the measure was of such a nature as the Charge describes.

Plan of the Committee of Revenue.

Then, to take it upon the first of these grounds—the plan itself. The plan is stated at length in page 1178. And your Lordships will find that it is introduced in this way:—I have already had occasion to observe that, before the abolition of the provincial Councils, and indeed as a reason which chiefly induced it, a considerable diminution had taken place in the collection of the landed revenue. On the 9th of November, 1781, at a consultation at which were present Mr. Hastings and Mr. Wheler, this plan was brought forward, and Mr. Hastings states that the system which yet subsists, though with many unessential variations, of superintending and collecting the public revenue through the agency of provincial Councils, was instituted for the temporary and declared purpose of introducing another more permanent mode by an easy and gradual change, by which the effects of too sudden an innovation might be avoided. This permanent plan is methodically and completely delineated in the same proceedings of the 23d of November, 1773, to which I have already referred your Lordships, in which proceedings the provincial Councils were first established.

It then goes on to state that—

"The plan of 1773 consisted substantially in this;—that all the collections of the provinces should be brought down to the Presidency, and be there administered by a committee of the most able and experienced of the covenanted servants of the Company, under the immediate inspection and with the opportunity of instant reference for instruction of the Governor General and Council. Conformably to this design it is now resolved and ordered"—

Approved by the Board in 1772.

Therefore, your Lordships perceive that, in the year 1781, in the institution of the Committee of Revenue, Mr. Hastings did but recur to the original plan which was adopted by the Board in the year 1773, and to which plan the establishment of provincial Councils was only mentioned as an introductory measure. The purpose of these provincial Councils having, therefore, been answered, in the year 1781, Mr. Hastings thought that the opportunity was arrived to recur to the original scheme. He goes on and observes—

"That a committee consisting of four covenanted servants of the Company be immediately constituted, who shall be entrusted with the charge and administration of all the public revenue of those provinces, and invested in the fullest manner with all the powers and authority which the Governor General and Council do themselves possess and shall not reserve exclusively to themselves."

24 MAY 1793.

The first object therefore of this plan is, to vest in four covenanted servants of the Company certain powers; and the question arises what these powers were?

Nature of powers entrusted to them.

The Charge alleges, and in that respect states Mr. Hastings to be criminal, that it was a delegation to these four gentlemen of all the powers of the Board. Now, my Lords, so far from it being a delegation of all the powers of the Board, upon comparing the words of the Charge with the passage in the plan I have just now read, your Lordships will perceive that these material words are purposely omitted, which make the whole difference and absolutely invert the sense. The Charge is that he delegated all the powers of the Board; the words of the plan are—"all the powers and authority, under the control of the Governor General and Council,"—which words are omitted in the Charge, for the purpose of making it appear that they were not subject to any control whatever. All these powers were delegated: and then, representing them as delegated powers not subject to any control, in this respect the honourable Managers infer, in the course of their observations, and state on the face of their Charge, that by that delegation of power Mr. Hastings is criminal. Restoring, therefore, to the subject these words the honourable Managers have thus omitted for the purpose of their Charge, I say distinctly this, in opposition to the assertion of that Article of the Charge, that, so far from having delegated powers in the manner the Charge asserts, the only powers that were delegated were "such as the Governor General and Council should not reserve exclusively to themselves"; and these powers, at the very moment of the delegation, were stated to have been so far under the control of the Governor General and Council. What then becomes of the first point of this criminal accusation, which states it to be a delegation not subject to such authority and control? But were the powers that were delegated, in effect, subject to that control, or do they, as the Charge afterwards in different words suggests, deprive all the members of the Council of any interference in the management of the revenues, and vest the knowledge and government of them solely and exclusively in Mr. Hastings, in defiance in this respect of the Act of Parliament, as the Charge states, as the ground upon which it was to stand? For this purpose I only beg leave to refer your Lordships to the tenth regulation of this plan, in page 1179:—

Perversion of evidence by the Managers.

Plan for the regulation of the Committee.

"That the committee shall meet three days in every week, and as much oftener as their business shall require; that they shall form

24 May 1793. resolutions and orders for the current or ordinary business of their department, and report to the Board, as they shall happen, such extraordinary occurrences, claims and proposals, as may require the special orders of the Board."

So that, in this case, in which all the powers of the Board are said to have been delegated without control to those four covenanted servants, it appears from the very powers themselves that they are not at liberty to act, in any special case whatever, without an immediate application to the Board, and receiving the positive directions and instruction of the Governor General and Council!

It then goes on—

"That they shall keep regular minutes of their proceedings in the customary form, and do no act collectively which shall not be recorded therein; that they shall lay a fair copy of each month's proceedings, together with a summary report of the same, the jemma wausee baukee, or accounts of demands, receipts and balances, of each division or district, and general and particular accounts of receipts and disbursements, and treasury accounts of each month, before the Board, on the 15th of the ensuing month."

Now, my Lords, I ask in what manner is it possible for the honourable Managers, now that the whole of this plan is distinctly before your Lordships, and which appears to consist in this merely—that the revenue should be administered by a committee subjected in every instance of their management to the approbation of the Board; that, on the 15th of every month, all the proceedings of that Board shall be laid before the Supreme Council—upon what ground is it that the honourable Managers can argue, as supported by the plan itself, that the effect of it necessarily was to deprive the members of the Council of any knowledge of the revenues, and to vest them solely and exclusively in Mr. Hastings? With respect, therefore, to these, which are the only two allegations of the Charge except the appointment of Gunga Govind Sing, I conceive that the Charges are completely disposed of, and that the plan itself is in no respect liable to the observations the honourable Managers have been pleased to make upon it.

The appointment of Gunga Govind Sing.

The only remaining subject with respect to this part of the case is the appointment of Gunga Govind Sing, who is stated to be a person of an infamous character, generally hated, distrusted, feared and despised. Upon this subject, I have no difficulty whatever to state that, on referring to your Lordships' Minutes, so far as it is material to ascertain one way or the other the mere character of this person, independently of his conduct, contradictory evidence may undoubtedly be

found; because, on referring to the minute in the year 1775, when Gunga Govind Sing appears to have been dismissed, and which will be found in page 1187, it will appear that then Mr. Francis undoubtedly did represent him as a person whose character he had heard to be bad. Your Lordships also will find that Mr. Young, Mr. Muir and, I believe, Mr. Harwood, all speak of him as a person who, among the natives of Bengal with whom they had conversed, had a character that was by no means good. 24 MAY 1793.

Contradictory evidence as to his character.

But, my Lords, on the other hand, let it be considered what this person really was, and in what different situations he had been placed that necessarily led to his appointment in that particular instance. It is admitted that, for the conduct of the intricate system of revenues there, it was necessary to have, in the character and capacity of diwan to this Committee, a man of the first skill, knowledge and experience. This he is admitted, by all persons, to have been. Mr. Anderson traces him from the first moment when he knew him employed in the collection of the revenues under Mohammed Reza Khan; he was afterwards diwan to the Calcutta Committee; he was afterwards diwan to the provincial Councils; he was, at the very time when he was appointed to this office, perhaps of all others, the person who stood most eminent in point of knowledge and skill in the revenue. A person of that description, placed in those high offices which he had filled, [which] necessarily obliged him to detect and to expose the arts of the different natives, always intent upon concealing the real value of their property and withholding from the Government the revenue that might be due, must necessarily be spoken of differently by various people; because it is a necessary consequence of a long possession of power in eminent situations that it never fails to attract the enmity of those against whom it is exercised. It is not to be wondered at that this man, placed at the head of the revenues in Bengal, should be spoken of differently by persons of different descriptions among the natives with whom he had occasion to transact business.

His acknowledged skill and experience.

But, so far from his having been that kind of character that the honourable gentlemen assert, in page 1231 your Lordships will find this question is put to Mr. Anderson:—

Favourable testimony of Mr. Anderson.

"Gunga Govind Sing has been described as a native of infamous character, generally distrusted, hated and feared. Was that his character? Do you know the character of Gunga Govind Sing?"—

24 MAY 1793. To which Mr. Anderson answers—

"I do not think he generally had a bad character—on the contrary; but, at the same time, there might be persons found in Bengal who would give him a bad character. These were persons who had taken opposite sides of a party, which will have an effect upon the minds of people, and persons who had suffered by his being appointed who were his competitors."

That is the evidence of Mr. Anderson with respect to this man—a person surely competent to collect the different opinions of natives in situations which gave him better opportunities of knowing the real character of Gunga Govind Sing, who was employed as an officer under him, than any of the other persons who have been produced; and yet Mr. Anderson distinctly states that, so far from being a man of character notoriously bad, so far as he had been able to collect the sentiments of the natives, his character was generally good!

Evidence of Sir John Shore.

In addition to the testimony of Mr. Anderson upon the subject, I think I shall be able clearly to show your Lordships that I am fortified with the evidence of Sir John Shore, as to the appointment of this man. When Sir John Shore is examined upon the subject, your Lordships will find he states, in page 1283, that he was acquainted with Gunga Govind Sing for a great number of years; that he was a person not deficient either in skill or ability. Now I distinctly admit this—that Sir John Shore must be understood as having admitted that the opinion that he entertained of Gunga Govind Sing certainly was not favourable. But the question is—whether, comparing the character of Gunga Govind Sing with that of the other natives who constituted the society to which he belonged, if Mr. Hastings in that instance had consulted the very witness whom the honourable Managers have called to establish his guilt with respect to the appoinment of Gunga Govind Sing, I cannot satisfy your Lordships that, according to every probability, Mr. Hastings must have done precisely what he did.

Probability of his approval of the appointment.

Your Lordships will find, in page 1284, that Sir John Shore distinctly admits this—that the committee must have a diwan: that resulted as a necessary consequence from the nature of the institution. Having admitted this, the question is then put to him:—

"Whether, at the time of the appointment of Gunga Govind Sing, all circumstances considered, you know a more proper person?"—

To which Sir John Shore distinctly answers— 24 May 1793.

"I know of no native fit for the appointment."

But here your Lordships will observe that the objection of Sir John Shore was distinctly and specifically to the nature of the institution itself, not to the person of the diwan; because he has before admitted that, whilst the institution continued and existed, it was necessary there should be a native diwan. Then, while the institution existed, it could not be criminal in Mr. Hastings to appoint a native diwan.

Sir John Shore is then asked:—

"If a native were necessary to be appointed, could you have selected from among the natives a person, in your opinion, more proper for the office?"—

Now, my Lords, here at last the question was fairly and broadly put to Sir John Shore. To which he answers—

"I certainly should not have selected him by choice. Whether I could have pitched upon any other person in preference I really cannot recollect at present."

So that, six years after the original appointment of this man, with all his knowledge and experience upon the subject of the revenues, the present Governor General of Bengal has distinctly told your Lordships, standing at your bar, even at that moment he could not undertake to say that he knew of any one person who was more fit for the office of diwan—supposing the office to be necessary—than the very person to whom Mr. Hastings gave that office; and, in respect of giving it, is now represented as criminal at your Lordships' bar!

General good conduct of Gunga Govind Sing.

Therefore, I trust that, under these circumstances, in the case of a man against whose conduct there is no distinct imputation whatever—for it is worthy of remark that, though Gunga Govind Sing acted for such a length of time as diwan to the Calcutta Committee, though he afterwards acted as diwan to this Board of Revenue, with the exception of the single instance to which I shall presently draw your Lordships' attention, no specific complaint whatever occurs with respect to the conduct of Gunga Govind Sing, in the execution of any one public trust that was ever committed to his charge. So that here you have the instance of a man employed in the highest office during a considerable length of time, and yet in the conduct of Gunga Govind Sing, as to the execution of those offices, not one individual from among the natives ever lodged before either of the Committees

24 MAY 1793. under whom he acted any complaint whatever: and this man is confessed to be, of all others, with respect to knowledge and experience, the most proper for the office which Mr. Hastings is accused for having appointed him to! The only specific instance with respect to the conduct of this person is in page 2193, where your Lordships will find that, upon a motion of Mr. Francis, when parties ran high, he was dismissed from the office of naib to the Calcutta Committee merely on this ground—that he had deducted [23,279 rupees from the advances made to Cumul al Din, on account of the salt farms, and had applied this money to make good a former balance due on account of rent from Cumal al Din for a] land farm.

Single instance of misconduct.

Appointment of Sir John Shore as the head of the Board.

This is the only complaint which appears against the conduct of Gunga Govind Sing on the records of the Company, from the one end of them to the other. But let it a little be considered whether it is possible to suppose that, at the time of the appointment of this person, Mr. Hastings could have any corrupt purpose whatever to answer. Who were the members whom he appointed to be at the head of that Board? Mr. Anderson, and, above all others, Sir John Shore. Sir John Shore, who has distinctly told your Lordships that, at the moment of his appointment, he had no habits whatever of private friendship or political connection with Mr. Hastings, and who must have been selected merely upon those grounds on which his country has since made choice of him to fill the highest office of the state—his acknowledged experience, his great integrity—all those requisites which peculiarly qualify him beyond any other man for the execution of any office whatever in which skill, ability and experience with respect to the revenues of India, form the necessary qualifications—Sir John Shore was the person Mr. Hastings placed at the head of this office! Do your Lordships think that, if Mr. Hastings had foreseen that which Sir John Shore afterwards states—that from the nature of the institution the members must have been tools in the hands of the diwan—he would have chosen to have appointed Sir John Shore, to have become his instrument in the hands of Gunga Govind Sing? I undertake to say that, if Mr. Hastings could have foreseen that which Sir John Shore afterwards states to be his opinion with respect to this institution, he would have acted precisely in the contrary way, and Sir John Shore, of all others, would have been the person whom he would have kept from this Board,

instead of being the man who, without any personal connection or friendship whatever, he chose to place at the head of it. 24 May 1793.

The charge against Mr. Hastings is the institution of the Committee of Revenue, which is stated to be criminal in the different respects I have pointed out. I have endeavoured to draw your Lordships' attention to the plan itself; and, I think that, from the most superficial observation of that, it will appear that there is no foundation whatever for any part of this Charge. But your Lordships will find much information afterwards given upon this subject by Sir John Shore, in his evidence, which occurs in the printed Minutes, page 1283: and the questions are distinctly put to Sir John Shore —whether or not the institution of the Committee of Revenue had, in any one of the respects which are stated in the Charge as characterising it as a criminal measure, those consequences which the Charge imputes to it; and in every one particular Sir John Shore answers directly the reverse. He is asked, in page 1283, in the terms of the Charge:—

Evidence of Sir John Shore.

"Whether the powers possessed by this Committee tended to invest the knowledge and inspection of the management of the territorial revenues solely and entirely in Mr. Hastings?"—

To which Sir John Shore, the witness called to prove Mr. Hastings criminal in this respect, distinctly answers—

"Certainly not! the proceedings were open to the inspection of the Council."

He is asked:—

"Did the powers possessed by this Committee tend to deprive the members of the Supreme Council of a due knowledge and inspection into the management of the territorial revenues?"—"They did not, in my opinion."

My Lords, this question is then put to him:—

"Having, in the paper an extract of which has been just now read, pointed out certain defects in the establishment of the Committee of Revenue, whether this Committee was obviously inadequate, from its original institution, or found to be so by experience?"—"I found it to be so by experience."

Thereby distinctly admitting that this Committee, in its original institution, was not such as a person even conversant with the subject as Sir John Shore is could perceive to be a measure that was wrong, in any respect whatever. He is then asked:—

The measure likely to excite differences of opinion.

"Was it not a subject upon which persons possessing skill and knowledge in the revenue department might fairly and conscientiously differ in opinion?"—

24 MAY 1793. To which he distinctly answers—

"I should suppose there would be a difference of opinion upon that as well as upon every other subject."

Then, my Lords, take it either way—put it upon the ground of the plan itself, or rest it upon the evidence of Sir John Shore, the only witness the honourable Managers have examined with respect to this transaction—on whatever ground the subject is considered, each equally disproves the Charge.

Take them one by one—that it tended to deprive the members of the Supreme Council of a due knowledge of and inspection into the management of the territorial revenues vested by the Legislature in the Governor General and Council, and, in effect, to vest the same solely and entirely in Mr. Hastings; that it was a measure so obviously bad that evil consequences must necessarily follow; appeal to the testimony of Sir John Shore himself, a member of that Board, having the best opportunity of observing the effects that it produced; and to every one of these distinct allegations of the Charge I oppose the testimony of Sir John Shore, giving a direct, distinct and flat, denial!

And here, again, I ask whether your Lordships, without any evidence whatever in the opposite scale, feel yourselves at this moment prepared to say, with respect to an institution regarding which Sir John Shore has stated that the defects which he afterwards discovered were merely found out by the experience which he had of the subject, that Mr. Hastings, without that experience, is to be considered as necessarily criminal, merely for having instituted that Committee which, in the opinion of persons best able to give your Lordships information, was entirely destitute of any one of these objections in which consists, according to the Charge, the specific criminality? Therefore, as far as we compare the Charge itself with the evidence, I have now, I trust, fully and completely satisfied your Lordships that it has, in every instance whatever, received a direct denial.

But, my Lords, I should indeed do great injustice to the cause of Mr. Hastings if I was to consider the evidence of Sir John Shore or of Mr. Anderson as resting here.

Alleged ill results of the measures.

The appointment of amins, the abolition of the provincial Councils, the institution of the Committee of Revenue—all these are stated as so many distinct parts of one corrupt and oppressive system, which, according to the Charge, terminated

in the oppression, vexation and destruction, of the inhabitants of Bengal. 24 May 1793.

My Lords, is this true or is it false? Is Mr. Hastings at this moment to be considered as the oppressor of the inhabitants of Bengal, and as the person who reduced the provinces under his charge to ruin and to misery; or, on the contrary, is he not a person who, when his conduct comes to be fairly estimated, is intitled to the commendations and to the gratitude of his country? Here, again, to that important testimony which I am sure the honourable Managers will never be able to get rid of, the evidence of Sir John Shore, I beg once for all to draw your Lordships' attention. Sir John Shore has distinctly proved this—that, from the year 1772 to the year 1784, a period comprising the whole of Mr. Hastings' government, the agriculture, the population, the general prosperity of the country, have increased. And this Sir John Shore has proved in opposition to a Charge which imputes to Mr. Hastings the oppression of the inhabitants and the destruction of the country.

Evidence of Sir John Shore as to the increased prosperity of the country.

My Lords, which will you believe—the persons who framed this Charge, who had no local knowledge or personal experience of India, or will you believe Sir John Shore, the greatest part of whose life was passed upon the spot, and who states, as the result of that experience, that evidence which I have now pointed out to your attention? I undertake to say that, unless the evidence of Sir John Shore is to be utterly dismissed from your consideration, on the ground that it is unworthy of belief, the whole of this Charge of revenues, as far as the conduct of Mr. Hastings is concerned, is cut up by the roots and must be cast entirely away.

I am aware, however, that an attempt will no doubt be made hereafter by the right honourable gentleman to dispose of that evidence. For, when Sir John Shore has distinctly stated at your Lordships' bar that the natives have been more happy under the British government than under the government of the Nawabs, when he tells your Lordships that agriculture, population and prosperity, have increased, when he tells your Lordships that, among those natives, both before and after these Charges, Mr. Hastings was universally esteemed a humane, benevolent, upright, compassionate and honourable, man, when on his oath he has said that he thought so of him then and that he thinks so now, all this evidence is to be got rid of, it seems, by an observation made by the honourable Manager—that Sir John

Objection of his alleged complicity in the crimes imputed to Mr. Hastings.

24 MAY 1793. Shore, the present Governor General of Bengal, is not even to be heard in this Court, "because," says the honourable Manager, "he is an accomplice in the crimes of Mr. Hastings."* An accomplice in the crimes of Mr. Hastings! O inconsistency of human conduct! O whimsical variety of human events! There stands Mr. Hastings, impeached for these supposed crimes, loaded with obloquy, covered with reproach; while, invested with power, clothed with dignity, surrounded with splendour, the lord of a mighty empire, the imperial ruler over obsequious millions, glitters Sir John Shore—the accomplice of his crimes!

My Lords, these words must have some meaning or they have none. I cannot suppose the latter, for that would be to impute to the right honourable gentleman the having consumed your Lordships' time with making use of unmeaning expressions. Admitting them, then, to have some meaning, what is it?—that Mr. Hastings is guilty of that which this Charge imputes to him, and that in that guilt Sir John Shore is involved.

Challenge to the Managers to impeach Sir John Shore.

My Lords, here again I must believe what the honourable gentleman has said, or I must disbelieve it. I cannot do the latter, for that would be to impute to him the having made a groundless accusation against an absent man. Believing the honourable gentleman to have some foundation for this charge, I can only say, let Mr. Hastings no longer appear at your bar a single, solitary, accused. Give him that which we are all apt to desire, whether we suffer or whether we enjoy—give him society. Recall the present Governor General of Bengal. Impeach Sir John Shore. Arraign him on the charge perferred by the right honourable gentleman. Place by the side of Mr. Hastings this accomplice in his crimes.

But, my Lords, do not stop even here; for, if you do, the work of justice will indeed be incomplete. Beat down these contracting pannels. Enlarge that narrow space. Let in the twenty-four Directors who, with knowledge and, perhaps, with friendly notice of the crimes of Sir John Shore, appointed him to the high office which he now fills.† But, my Lords, go further yet. Let proclamation be made and more illus-

* In reference to an objection made by Mr. Burke to the admission of a minute of Sir John Shore, produced in evidence by Mr. Hastings' Counsel. See "Proceedings on the Trial," in the present volume, p. xix.

† Mr. Burke had written a public letter to the Chairman, remonstrating against the appointment of Sir John Shore. Note in the Additional MS., 17,082, f. 58. b.

trious culprits present themselves. Let His Majesty's Ministers come forward who approved the nomination of the court of Directors. There, gather them altogether—Mr. Hastings, Sir John Shore, the accomplice in the crimes of Mr. Hastings—the court of Directors, the accomplices in the crimes of Sir John Shore—His Majesty's Ministers, the accomplices in the crimes of the court of Directors;—there, my Lords, let them stand, and if they be, as the honourable gentleman states, partakers in the guilt of Mr. Hastings, let them at least have the honour to share in the accusation. I trust, therefore, that the honourable gentleman will not succeed in the endeavour, if it should be hereafter made, to get rid of the evidence of Sir John Shore by such observations as these: but upon that evidence I rely, as containing in itself—unless, as I before said, your Lordships should think it necessary to blast the honour of Sir John Shore in common with that of Mr. Hastings—a complete and satisfactory answer to every part of these different Charges. 24 May 1793.

My Lords, I have now, to the best of my power, gone through these observations with which I have found it necessary to trouble your Lordships with respect to these different Charges; which, however much they may vary in their several particulars, will be all found ultimately to resolve themselves into the same general ground—corruption in the execution of a great public trust. This, my Lords, is a black taint that pervades the whole. My Lords, I will only say that, in such a case, the evidence ought indeed to be clear, the testimony convincing, that should warrant a conclusion of guilt; and, in the case even of the worst man, if any doubt whatever appeared, I should be intitled to claim of your Lordships a complete acquittal. But, my Lords, let it not be supposed that it is on the grounds of a doubtful case that I expect of your Lordships a complete and honourable acquittal of the gentleman at your bar. No, my Lords, on his behalf I proudly assert all that is most opposite and repugnant to what this Charge contains—an eager, unremitting, ardent, zeal for the public service, constituting the chief and ruling passion of his breast. Opposed and thwarted, its efforts may have been irregular, its struggles wild; but even these, when fairly considered, will be found to carry with them the certain marks that denote their origin and ascertain their source. Conclusion.

My Lords, the most irregular efforts, the wildest struggles,

24 May 1793. of a great and generous mind, still in its most eccentric career connecting with and involving the public good, can never be confounded with the mean operations of a base and sordid mind, whose most vigorous shoots at best, like ivy, but encircle and entwine itself. View then the conduct of Mr. Hastings and try it by these tests;—if your Lordships find, on the one hand, that, in every instance, the state of public affairs was such as fairly to account for the receipt of those different sums at the time—if you find that the discovery was fairly made to the court of Directors—if you find that the most beneficial consequences resulted from the application, and that, at this moment, every single sum that has ever been received has been faithfully accounted for—my Lords, on what grounds, in opposition to such evidence, will you be able to say that in your consciences you are satisfied that Mr. Hastings meanly and corruptly took these sums, meaning them for himself and never intending to appropriate them to the public benefit?

Therefore, I say, if all this evidence shall, as I trust it must, be found infinitely to outweigh all that in the shape of ingenious inference, conjecture or supposition, your Lordships may have heard and may still hear upon the other side, in such case I have no doubt that your Lordships will immediately pronounce that sentence which, I am sure, to none will give more pleasure than to yourselves—that Mr. Hastings is not guilty of the crimes and misdemeanours which these Charges impute!

END OF THE THIRD VOLUME.

CORRIGENDA.

Page 385.—In place of note at the foot of the page, substitute the following:—"For the explanation of this expression, see a subsequent part of Mr. Plumer's Speech, p. 425."

Page 497.—For "Defence to the Sixth, the Seventh and the Fourteenth, Articles," read "Defence to the Sixth, part of the Seventh, and the Fourteenth Articles."

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